OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 8 June 2006 [1]

I — Introduction

1. For the second time in the same proceedings the Hessisches Finanzgericht (Finance Court, Hesse) asks the Court as to the classification in the Combined Nomenclature [2] ('CN') of ink-cartridges designed for a specific type of ink-jet printer (the Epson Stylus Colour).

2. In its first judgment on these ink-cartridges the Court concluded that they were to be classified as ink under CN subheading 3215 90 80. [3] It based this *inter alia* on the assumption that the mechanical and electronic functioning of the printer in itself was not dependent on the presence of an ink-cartridge. [4]

3. Before the national court the plaintiff in the main proceedings, Turbon International GmbH ('Turbon'), challenged this assumption. Having heard evidence the national court was able to satisfy itself that the printer did not function in the absence of an ink-cartridge.

4. On the basis of this finding, the national court doubts that the Court's first judgment was correct and asks whether the ink-cartridges should in fact be classified under CN heading 8473 as a part of a printer.

II — Legal framework

A — *The Combined Nomenclature*

5. The general rules for the interpretation of the CN ('the general rules') which appear in

1 — Original language: German.

2 — 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 Annex I to Commission Regulation (EC) No 1734/96 of 9 September 1996 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1996 L 238, p. 1).

3 — Case C-276/00 *Turbon International* v *Oberfinanzdirektion Koblenz* [2002] ECR I-1389.

4 — *Turbon International* (cited in footnote 3), paragraph 30.

the first part of the CN, Title I, A, provide in particular:

'Classification of goods in the Combined Nomenclature shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters 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.

2. a) ...

b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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..., those headings are to be regarded as equally specific in relation to those goods...;

b) Mixtures, composite goods consisting of different materials or made up of different components ... 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.

goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repeated use.

...

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein.

(a) camera cases, musical instrument cases, gun cases, drawing-instrument cases, necklace cases and similar cases, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

(b) subject to the provisions of rule 5(a), packing materials (1) presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such

6. 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.'

6. The footnote to rule 5(b) CN states:

'The terms "packing materials" and "packing containers" mean any external or internal containers, holders, wrappings or supports other than transport devices (e.g. transport containers), tarpaulins, tackle or ancillary transport equipment. The term "packing containers" does not cover the containers referred to in rule 5(a).'

7. At the material time, [5] title VI, chapter 32, of the second part of the CN (Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks) included the following entries under heading 3215:

'3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid:
	— Printing ink:
3215 11 00	— — Black
3215 19 00	— — Other
3215 90	— Other:
3215 90 10	— — Writing or drawing ink
3215 90 80	— — Other'

5 — See the reference above, footnote 2.

8. At the material time, the autonomous rate of duty for CN subheading 3215 90 80 was 16%, and the conventional rate was 6.5%. [6]

9. At the material time, section XVI, chapter 84, of the second part of the CN (Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof) contained the following entries under headings 8471 and 8473:

'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 60	— Input or output units, whether or not containing storage units in the same housing:

6 — In short, goods imported from Member States of GATT are subject to the conventional rate of duty, and other goods are subject to the autonomous rate.

8471 60 10	— — For use in civil aircraft
	— — Other:
8471 60 40	— — — Printers
8471 60 50	— — — Keyboards
8471 60 90	— — — Other
...	
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with the machines of heading Nos 8469 to 8472:
...	
8473 30	— Parts and accessories of the machines of heading No 8471:
8473 30 10	— — Electronic assemblies
8473 30 90	— — Other
	...'

10. At the material time the autonomous rate of duty for CN subheading 8473 30 90 was 12%, and the conventional rate of duty was 1.6%.

11. Explanatory note 2 to section XVI of the CN stated:

'2. [P]arts of machines ... are to be classified according to the following rules:

(a) ...

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind or in heading No ...8473 ... as appropriate. ...'

B — *The Harmonised System*

12. The CN is based on the Harmonised System ('HS'). The CN and the HS are multi-purpose nomenclatures which are intended to encompass all commodities traded internationally. The HS was laid down as an international convention within the framework of the World Customs Organisation. The Community is a contracting party to the convention.[7] The CN has adopted the structure of the HS, but contains further subdivisions for Community tariff and statistical purposes.

13. So far as relevant in the present proceedings, the wording of the general rules, the headings and the explanatory notes of the CN is not significantly different from that of the HS. It is therefore unnecessary to quote the provisions of the HS. However, the World Customs Organisation publishes explanatory notes on the HS which may contain useful guidance for classifying goods in the CN.

14. Paragraphs X to XIII of the explanatory note relating to general rule 2(b) of the HS provide *inter alia*:

'X) Rule 2(b) concerns mixtures and combinations ... and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance ... and headings in which there is a reference to goods of a given material or substance ...

XI) The effect of the Rule is to extend any heading referring to a material or substance to include ... goods consisting partly of that material or substance.

XII) ...

XIII) As a consequence of this Rule, mixtures and combinations ... and goods consisting of more than one material or substance, if prima facie classifiable under two or more headings, must therefore be classified according to the principles of Rule 3.'

7 — See the International Convention on the Harmonised Commodity Description and Coding System (OJ 1987 L 198, p. 3).

15. Paragraphs VII and VIII of the explanatory note relating to general rule 3(b) of the HS state:

'VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.'

16. Paragraph I of the explanatory note relating to general rule 5(a) of the HS explains:

'This Rule shall be taken to cover only those containers which:

1) are specially shaped or fitted to contain a specific article or set of articles i.e. they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;

2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packages;

3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;

4) are of a kind normally sold with such articles; and

5) do not give the whole its essential character.'

17. Paragraph IV of the explanatory note relating to general rule 5(b) of the HS states:

'This rule governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use, for example, certain metal drums or containers of iron or steel for compressed or liquefied gas.'

18. The explanatory notes to heading 3215 of the HS state:

'This heading does not include:

a) ...

b) Refills for ball point fountain pens comprising the ball point and ink-reservoir (heading 96.08). On the other hand, mere ink-filled cartridges for ordinary fountain pens remain in this heading.

c) ...'

19. Finally, the explanatory note to heading 8473 of the HS states:

'The accessories covered by this heading are interchangeable parts or devices designed to adapt a machine for a particular operation, or to perform a particular service relative to the main function of the machine, or to increase its range of operations'.

III — The main proceedings, the question referred and the proceedings before the Court

A — *The main proceedings (first part)*

20. On 27 June 1997 Turbon's predecessor in title applied for the issue of a binding tariff information concerning ink-cartridges which were designed for use with Epson Stylus Colour ink-jet printers and which did not have an integrated print head.

21. Turbon's predecessor in title was of the view that the ink-cartridges were to be classified under CN subheading 8473 30 90. However, on 22 August 1997 the Oberfinanzdirektion (Principal Revenue Office) Frankfurt am Main classified the ink-cartridges under CN subheading 3215 90 80.

22. Following an unsuccessful appeal against this classification decision, on 17 February 1998 Turbon's predecessor in title raised proceedings before the Hessisches Finanzgericht, Kassel. In January 1999 Turbon succeeded to the rights and obligations of its predecessor in title.

B — *The first reference for a preliminary ruling*

23. The Hessisches Finanzgericht was unsure as to the correct classification of the ink-cartridges under the CN. Accordingly, it stayed the proceedings and referred to the Court for preliminary ruling the question as to whether the ink-cartridges which were the subject of the dispute were to be classified under CN subheading 3215 90 80 or whether they fell under CN heading 8473 as parts or accessories of a printer coming under CN heading 8471.

24. In answering the question referred the Court [8] applied general rule 3(b) of the CN. [9] In doing so it proceeded on the footing that the ink-cartridges were *prima facie* classifiable under two or more headings of the CN. [10] Accordingly, the Court first considered what gave the ink-cartridges their essential character, and concluded that it was the ink. [11] The essential function of the cartridges consisted in containing the ink and supplying the printer with it. [12] Finally, the Court was of the view that the ink-cartridges therefore corresponded to mere ink-filled cartridges for ordinary fountain pens. [13]

25. For those reasons, the Court held that it was not possible to classify the ink-cartridges as 'part' of a printer under CN heading 8473. [14] The word part, within the meaning of CN heading 8473, implied a whole for the operation of which the part was essential. [15] This was not so in the case of the ink-cartridges. In accordance with the information provided by the national court and the submissions of Commission, the Court assumed that the mechanical and electronic functioning of the printer in itself was not in

8 — See *Turbon International* (cited in footnote 3), paragraphs 25 and 33.

9 — See above, footnote 5.

10 — See the wording of general rule 3(b) of the CN, which presupposes this, and *Turbon International* (cited in footnote 3), paragraph 25.

11 — *Turbon International* (cited in footnote 3), paragraphs 26 and 27.

12 — *Turbon International* (ibid.), paragraph 27.

13 — *Turbon International* (ibid.), paragraph 34.

14 — *Turbon International* (ibid.), paragraphs 29 to 31.

15 — *Turbon International* (ibid.), paragraph 30.

any way dependent on the presence of an ink-cartridge. [16] Given that it did not have any particular role in the actual mechanical functioning of the printer, the ink-cartridge could not be regarded as 'part' of a printer within the meaning of CN heading 8473. [17]

26. The Court also held that classification under CN heading 8473 as an 'accessory' to the printer was not possible. [18] The HS explanatory note relating to heading 8473 stated that classification on that basis required that the ink-cartridges should be designed to adapt the printers for a particular operation, or to perform a particular service relative to their main function, or to increase their range of operations. [19] However, the cartridges merely enabled the printers to fulfil their usual function. [20]

27. Accordingly, the Court's answer to the national court was that the ink-cartridges were to be classified under CN subheading 3215 90 80.

16 — *Turbon International* (ibid.), paragraph 30.
17 — *Turbon International* (ibid.), paragraph 31.
18 — *Turbon International* (ibid.), paragraphs 29 and 32.
19 — *Turbon International* (ibid.), paragraph 32.
20 — *Turbon International* (ibid.), paragraph 32.

C — *The main proceedings (second part)*

28. When the case continued before the Hessisches Finanzgericht, Turbon immediately challenged the Court's assumption that the mechanical and electronic functioning of the printer in itself was not in any way dependent on the presence of an ink-cartridge. The Hessisches Finanzgericht then ordered evidence to be given by means of a demonstration. The national court was able to make the following findings in fact.

29. As soon as either of the two ink-cartridges were removed from the printer, the printer would cease completely to function because of a switch in the print head. A red light on the printer control panel indicated that an ink-cartridge was missing and the printer was not ready for operation.

30. In this operating status, the printer would not receive data from any computer connected to it, and would not process or convert any data. If a print command were issued from a connected computer, a message would appear on the screen stating that the printer was 'offline'.

31. Moreover, the mechanical part of the printing process was not carried out. The print head would not move from side to side, and paper was neither drawn in nor printed on. The only operation that the printer could still perform in this status was moving to the 'parked' position and — when one of the buttons on the printer was pressed — moving from the 'parked' position to the 'replace' position.

32. Operation was blocked by software permanently installed in the printer, and not, for example, by any driver software installed in the connected computer. The national court concluded that, to summarise, a printer of the type for which the ink-cartridges were designed could not operate, either mechanically or electronically, without the ink-cartridges.

33. By contrast, the printer would initialise if the ink-cartridges were in position. An internal mechanical process would ensure that there was no air in the ink delivery system between the print head and the ink-cartridges. Any air in this system would damage the print head over long-term use. However, if the ink-cartridges were empty the printer would still initialise — but air would be sucked into the ink delivery system.

34. After the completion of the initialisation process a green light would indicate that the printer was operational. If a print command were issued by a connected computer, the printer would receive data from the computer, process it, draw in paper and set the print head in motion. If the ink-cartridges which had been inserted still contained ink, the paper drawn in would be printed on by the time it left the printer, but would otherwise exit it blank.

35. If there was no paper in the printer, but the printer was otherwise ready to print, then when a connected computed issued a print command it would receive the data sent to it process it. However, the printing process would not be carried out. If paper was inserted and a button on the printer pressed, the printer would start to print without any further command from the computer.

D — *The question referred and the procedure before the Court*

36. For these reasons, by order dated 14 April 2005, lodged at the Registry of the Court on 15 June 2005, the Hessisches Finanzgericht referred the following question to the Court of Justice of the European Communities for preliminary ruling:

'In the judgment of 7 February 2002 in Case C-276/00 it was held that 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 1734/96 of 9 September 1996, had to be interpreted as meaning that an ink-cartridge without integrated print head, consisting of plastic casing, foam, a metal screen, seals, tape seal, labels, ink and packing material, which, as regards both the cartridge and the ink, could only be used in a printer with the same characteristics as Epson Stylus Colour ink-jet printers, was to be classified under subheading 3215 90 80 of the Combined Nomenclature. Contrary to that ruling, should not the ink-cartridge described above in fact be classified as a part or accessory of a printer under CN heading 8473 because the mechanical and electronic functioning of the printer is dependent upon the presence of a cartridge of that kind?'

37. In the proceedings before the Court, Turbon, the Commission and the United Kingdom of Great Britain and Northern Ireland submitted observations.

IV — Legal analysis

38. It is settled case-law that classification of goods for customs purposes is in general to be sought in their objective characteristics and properties, as well as their intended use if it is inherent in the product on the basis of its objective characteristics and properties. [21] In addition, the explanatory notes of the World Customs Organisation to the HS may be an important aid to the interpretation of the various tariff headings but do not have legally binding force. [22]

39. In my Opinions in *Ikegami* and *Uroplasty* I have already explained the approach the general rules lay down to classifying goods. [23]

40. First, the goods to be classified must be precisely analysed by reference to their intended purpose and their material properties. General rule 1 of the CN requires that the goods then be given a preliminary classification by reference to the wording of the headings of the relevant sections and chapters, and that there be considered whether an overall view of the wording of the headings and of the notes to the relevant sections and chapters enables a clear classi-

21 — *Turbon International* (cited in footnote 3), paragraph 21, and Case C-467/03 *Ikegami Electronics (Europe)* v *Oberfinanzdirektion Nürnberg* [2005] ECR I-2389, paragraphs 17 and 23.

22 — *Turbon International* (cited in footnote 3), paragraph 22; Case C-328/97 *Glob-Sped* v *Hauptzollamt Lörrach* [1998] ECR I-8357, paragraph 26; and Case C-201/96 *Laboratoires de thérapeutique moderne* v *Fonds d'intervention et de régularisation du marché du sucre* [1997] ECR I-6147, paragraph 17.

23 — See my Opinion in *Ikegami Electronics (Europe)* (cited in footnote 21), points 31 to 36, and in Case C-514/04 *Uroplasty* v *Inspecteur van de Belastingdienst/Douane district Rotterdam*, case pending before the Court, points 42 to 44.

fication. If not, the decision as to which is the correct heading is to be made by reference to general rules 2 to 5 of the CN. Finally, classification under a subheading is determined by reference to general rule 6 of the CN.

41. In its first judgment, on the application of general rule 3(b) of the CN the Court concluded that the ink-cartridges should be classified under CN heading 3215. However, the new information about the ink-cartridges and their interaction with the printer casts a different light on the facts. On account of this there are two reasons which point to a different classification.

42. First, the new information means that the general rules of the CN require classification under CN heading 8473. Second, on the approach taken by the Court in its first judgment, the requirements for applying general rule 3(b) of the CN — which the Court relied on as the essential basis for its judgment — are not satisfied.

43. Specifically, general rule 3(b) of the CN may be applied only if the goods are *prima facie* classifiable under two headings. [24] It is apparent that from paragraph 25 of its first judgment that the Court assumed that the ink-cartridges were *prima facie* classifiable under both CN heading 3215 and CN heading 8473. However, in paragraphs 30 to 33 it explained that the conditions for classification under CN heading 8473 were not satisfied.

44. Accordingly, classification under CN heading 3215 was required by general rule 1 of the CN in conjunction with general rule 2(b) of the CN or general rule 5(b) of the CN, and not because of general rule 3 of the CN. The scheme of the general rules is that general rules 2 to 5 of the CN are applicable only if it is not otherwise possible to make a clear-cut classification. Thus, the reasoning in paragraphs 30 to 33 of the first judgment was decisive, and not the criteria in general rule 3 of the CN.

45. This follows also from the analysis I shall now carry out by reference to the requirements of the general rules described above. [25]

A — *Analysis of the goods*

46. According to the information before the Court in the first proceedings, an ink-

24 — See above, point 5.

25 — See above, point 40.

cartridge consists of a parallel-piped plastic casing, foam, a metal screen, seals, a tape seal, and a label. It contains approximately 35 ml of ink. Whereas the ink is valued at DEM 0.35, the total value of the cartridge is approximately DEM 4. The cartridge and the ink are specially designed for Epson Stylus Colour printers, and can be used only with them. The cartridge can be re-used if refilled with ink.

47. Turbon now adds that the ink-cartridges were manufactured in the same way as the printers, with the same materials and in sterile rooms. They were designed to interact with the printer precisely, so that even in extreme conditions they would guarantee a high-quality flow of ink and that the ink would not escape. Thus, the ink-cartridge was not merely an ink container but an integral part of the 'print management system'.

48. Particular features of its construction were the protective seals and the very thin, long air vents, which prevented not only any unnecessary thinning of the liquid but also any vacuum being created in the cartridge. The use of foam meant that the flow of ink did not depend on gravity. This distinguished them from, for example, ink-filled cartridges for fountain pens, which required gravity for the ink to flow into the pen-nib.

49. According to the information provided by the national court, it is also to be assumed that the printer is operational and carries out the mechanical and electronic functions of the printing process only if cartridges are correctly inserted, with or without ink. Otherwise, a protective mechanism of the printer is engaged, locking it in a parked position and indicating that the printer is not operational. [26]

50. Thus, the ink-cartridges consist essentially in two elements: the cartridge and the ink.

B — *Analysis of the relevant headings and notes*

51. According to the general rules, it is necessary first to consider whether classifica-

26 — As to this information, see above, points 29 to 35.

tion is possible solely by reference only to general rule 1 of the CN. As regards the two elements, namely the ink and the cartridge, there are *prima facie* two relevant headings, CN heading 3215 and CN heading 8473.

1. CN heading 3215

52. The objective characteristics and properties of the ink element correspond to that of 'other inks' in CN heading 3215. Having regard to their physical properties and their presentation in a cartridge which can be used only with a specific type of ink-jet printer, their intended purpose as defined by their objective characteristics and properties also indicates classification as 'other inks' under CN heading 3215.

53. By contrast, the cartridge element does not correspond to the descriptions in CN heading 3215. It follows that it is not possible to classify the ink-cartridge under CN heading 3215 by reference only to general rule 1 of the CN.

2. CN heading 8473

54. On the other hand, in accordance with general rule 1 of the CN the ink-cartridge could be classified under CN heading 8473, as a 'part' or 'accessory' suitable for use solely or principally with the machines of CN heading 8471.

55. There is no dispute that the printer for which the ink-cartridges are designed is to be classified under CN heading 8471.

56. However, as the Court correctly held in its first judgment (paragraph 32) it is not possible to classify the ink-cartridges under CN heading 8473 as an 'accessory'. As the explanatory note to HS heading 8473 makes clear, only something which enables the principal item to perform a function over and above its standard functions counts as an accessory.[27] This is not the case with the ink-cartridges, which, though necessary to enable the printer's standard functions, do not enable anything beyond that.

27 — See above, point 19.

57. By contrast, on the information now available the cartridge element fits the description in CN heading 8473 and explanatory note 2(b) to CN section XVI.

58. First, the cartridges are suitable solely for use with the type of printer for which they are designed, as the wording of CN heading 8473 requires. [28]

59. Second, they also satisfy the definition of the word 'part' in CN heading 8473 and explanatory note 2(b) to CN section XVI. According to the judgment in *Peacock*, the word 'part' implies a whole for the operation of which the part is essential. [29]

60. In the present case, the 'whole' in the sense of the test laid down in *Peacock* is the printer, as a functioning unit. The 'part' is the cartridge. Thus, it is necessary that the cartridge be essential for the operation of the printer. The information now available indicates that the cartridge is indeed essential, because it is an essential part of the printer's print management system.

61. Once both cartridges have been inserted in their normal, full condition, when the printer is initialised a sucking mechanism ensures that there is no air in the ink delivery system between the print head and the cartridges, because otherwise the print head could be damaged. Therefore, it is crucial that the cartridges are designed to fit exactly so as to ensure an airtight seal at the point of contact. In the case of the cartridges this is achieved by their external shape, their internal construction and their integral seals.

62. For the correct execution of the printing process it is equally important that the correct flow of ink is guaranteed. The design of the cartridge ensures this by means of the protective seals, the specially shaped air vents and the foam. In this context the foam in the cartridge constitutes a mechanical element of the print system, because in conjunction with the sucking mechanism it

28 — See above, point 9.

29 — See Case C-339/98 *Peacock* v *Hauptzollamt Paderborn* [2000] ECR I-8947, paragraph 21.

makes the ink available in the right amount for printing. In particular, it guarantees the flow of ink even in extreme conditions.

63. Finally, the metal screen which is built into the cartridge protects the print head from damage caused by any clogging of the ink.

64. Thus, the cartridges, which are designed specially for the system, are essential for the operation of the printer, namely to print. The cartridges do not have any other use and without the cartridges — irrespective of the ink — the printer is unusable.

65. This is indeed demonstrated by the way the printer actually operates. As the national court has held, unless the cartridges are correctly inserted the printer does not perform any of the mechanical and electronic functions which form part of the printing process. The printer is programmed in this way not out of caprice but in order to protect the system from damage.

66. As the United Kingdom submitted in the proceedings before the Court, and as the Oberfinanzdirektion (Principal Revenue Office), Koblenz,[30] submits in the main proceedings, this is not gainsaid by the argument that because the printer is programmed not to carry out these functions when the cartridges are removed, refusing to print when the cartridges have been removed is one of the normal electronic and mechanical functions of the printer.

67. As Turbon submitted, such an interpretation of the test in *Peacock* would lead to absurdity. Every safety measure which related to a part of a system would mean that the part in question could not be regarded as a part. It would mean, for example, that if a car were designed such that if the fuel pump failed the ignition would not start and a red light would light up inside, the fuel pump would not be a part of the car because the car would be functioning as programmed.

68. The correct approach is accordingly that the *Peacock* test means that the function of the whole for the operation of which the part must be essential is only the normal, standard function of the whole. In the case of a car this is driving, and in the case of a printer it is printing. For that, a car needs a fuel pump which is designed for its system,

30 — The Oberfinanzdirektion, Koblenz, took over *inter alia* the functions of the Customs Department of the Oberfinanzdirektion, Frankfurt, on 1 August 1998.

and a printer needs cartridges designed for its system.

69. A further point reinforces this conclusion. Paper and ink are the two consumables the ink-jet printer uses. Normally, paper is supplied in standard packages of 500 sheets. However, it cannot be inserted into the printer in that condition. Instead, the sheets must be laid into the paper tray specially designed for the printer. It is only this tray which makes the paper available to the printer's mechanical systems in such a way that they can use it. With most machines, the paper tray can be removed to allow it to be filled with paper. However, no-one would doubt that it is a part of the printer.

70. The cartridges too may be removed and refilled. Indeed, a trade has developed in the form of 'filling stations' providing low-cost refilling. [31] Thus, the cartridges fulfil the same task as the paper tray, namely to make consumable material available to the printer's mechanical system in such a way that it may be used for the printer's function. On the *Peacock* test, both are parts of the printer.

71. As Turbon has submitted without contradiction, the Community's most important trading partners, namely the United States of America and Japan, have also reached this conclusion in respect of the ink-cartridges which are the subject of the present case.

72. By contrast, the ink in the cartridges is not a part of the printer. Admittedly, its objective characteristics and the fact that it is delivered by means of the cartridges mean that it is suitable solely for use with the type of printer for which the cartridges are designed. However, as the demonstration in the evidential hearing before the national court proved, it is not essential for the mechanical and electronic functioning of the printer.

73. It follows that on this basis too, it is not possible to classify the ink-cartridges under CN heading 8473 solely by reference to general rule 1 of the CN.

31 — Since refilling ink-cartridges is more expensive than refilling a paper tray, it is normally not done by the final consumer.

74. As the ink-cartridges thus consist of two elements which, when looked at separately, may each be classified under only one heading, but which, when looked at as a whole, are not covered by any one heading, it is necessary to refer to general rules 2 to 5 of the CN in order to classify the ink-cartridges in the CN.

C — *Application of general rules 2 to 5*

75. The structure of the general rules is such that so far as general rules 2 to 4 are concerned, the order in which they are considered follows the order in which the provisions appear. This is not the case with general rule 5. It is distinct from general rules 2 to 4 and may be considered first. This is appropriate in the present case: if the cartridges are packing materials, packing containers or containers for the ink within the meaning of general rule 5, the ink-cartridges must be classified under CN heading 3215.

1. General rule 5

76. General rule 5(a) of the CN states that containers

— which are similar to camera cases, musical instrument cases, gun cases, drawing-instrument cases and necklace cases,

— which are specially shaped or fitted to contain a specific article,

— which are suitable for long-term use,

— which are presented with the articles for which they are intended and are of a kind normally sold with them, and

— which do not give the whole its essential character

shall be classified with the articles for which they are intended. [32]

32 — See above, point 5.

77. The cartridges are not at all similar to cases for cameras, musical instruments, guns, drawing-instruments or necklaces. Those articles are specially shaped and are intended for long-term use. They may be taken out of their containers in order to be used and thereafter put back in. [33] By contrast, the ink in the cartridge is a liquid consumable which is used up very quickly and cannot in any way be returned to the cartridge after use.

78. Nor is the cartridge specially shaped or fitted to hold the ink in the same way as camera cases, musical instrument cases, gun cases, drawing-instrument cases or necklace cases. [34] Although the cartridge ensures that the ink does not escape, this function could be performed by a simple plastic container. The particular design of the cartridge is instead due to its function in the printer's print management system.

79. For those reasons, the cartridge is in any event not a container within the scope of general rule 5(a) of the CN.

80. General rule 5(b) of the CN provides that 'packing materials' are to be classified with the goods therein if

— they are external or internal containers, holders, wrappings or supports,

— they are not transport devices — in particular transport containers — tarpaulins, tackle or ancillary transport equipment,

— they are not containers which fall within general rule 5(a) of the CN,

— they are of a kind normally used for packing such goods, and

— they are not clearly suitable for repeated use.

33 — See also paragraph I(2) of the explanatory note to general rule 5(a) of the Harmonised System (cited above, point 16).

34 — See also paragraph I(1) of the explanatory note to general rule 5(a) of the Harmonised System (cited above, point 16).

If packing materials in that sense are clearly suitable for repeated use, this provision is not binding. [35]

81. The cartridges clearly satisfy the first criterion of packing materials within general rule 5(b) of the CN. Specifically, they are *also* an 'external container' for the ink. In its first judgment the Court held this characteristic of a container to be decisive, and compared an ink-cartridge with an ink-filled cartridge for a fountain pen. [36]

82. However, the function of the ink-cartridge is not restricted to purely packaging, as for example an ink jar for refills or the packaging of a unit of 500 sheets of paper. It also performs tasks in the print management system, as a part of the printer, which are essential for the operation of the printer.

83. However, the purpose of general rule 5(b) of the CN restricts its scope to items which are purely packaging, and excludes objects which are both packaging and part of another whole. That in itself is enough to preclude the application of general rule 5(b) of the CN to the ink-cartridges. There is also the point that the refillable ink-cartridges are clearly suitable for repeated use. Thus, in both respects the ink-cartridges are to be distinguished from mere ink-filled cartridges for ordinary fountain pens.

84. Ink-filled cartridges are pierced when inserted into fountain pens — thus, if separated from the fountain pen they are no longer watertight — and consequently can be used only once. By contrast to the ink-cartridges in the present case they do not have any particular design characteristics which, for example, mean that they actively participate in the delivery of the ink and in the protection of a system against damage, and are instead merely plastic containers. [37]

85. This difference is apparent also in the value ratios. The ratio of the value of the cartridge to that of the ink is almost twelve to

35 — See above, points 5 and 6.

36 — *Turbon International* (cited in footnote 3), paragraphs 27, 28 and 34.

37 — In their place it is usually possible to use a converter, and this makes it clear that they are merely containers which deliver ink and are not specific parts which are essential for the operation of a system.

one, because of the design features of the cartridge, whereas ink-filled cartridges are simply plastic containers which are not worth refilling.

86. It follows that the explanatory note to HS heading 3215, to which the Court referred in paragraph 34 of its first judgment, draws conclusions from general rule 5(b) of the CN only for ink-filled cartridges. This is because only *mere* ink-filled cartridges for *ordinary* fountain pens fall within this heading. [38] Mere ink-filled cartridges of this type have all the features of packing material within the meaning of general rule 5(b) of the CN and are therefore to be classified with the ink. The explanatory note makes this clear. Even ink-filled cartridges which cannot be regarded either as 'mere' or as for 'ordinary' fountain pens do not fall within the explanatory note. This applies *a fortiori* for parts of a system which fulfil more extensive roles than simply containment.

87. Ultimately, general rule 5 of the CN does not indicate that the ink-cartridges should clearly be classified under CN heading 3215.

38 — See above, point 18.

Accordingly, general rules 2 ff. of the CN must be considered.

2. General rule 2

88. General rule 2 of the CN [39] refers both to goods which consist of two or more substances — such as the ink-cartridges — and to headings which apply to given materials or to goods made out of given materials. [40] It extends the scope of those headings so as to include goods which consist only partly of the material in question. [41] Thus, the effect of this provision is that every heading which covers a part of any goods covers also the whole of those goods, even if the goods comprise other parts too.

89. It follows that both CN heading 3215 — on account of the ink — and CN heading 8473 — on account of the cartridges — cover the whole ink-cartridge.

39 — See above, point 5.

40 — This is made clear in particular by paragraph X of the explanatory note to general rule 2(b) of the HS: see above, point 14.

41 — See paragraph XI of the explanatory note to general rule 2(b) of the HS (cited above, point 14).

90. Given that the ink-cartridges are *prima facie* classifiable under two headings, it is necessary to consider general rule 3 of the CN. [42]

3. General rule 3

91. General rule 3(a) of the CN [43] provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two headings each refer to part only of the materials or substances contained in composite goods, the provision deems them to be equally specific. Thus, general rule 3(a) of the CN does not assist in deciding between the headings indicated by the application of general rule 2(b) of the CN.

92. General rule 3(b) of the CN provides that at the next stage goods consisting of different materials or made up of different components 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.

93. In its first judgment the Court assumed that the ink gave the ink-cartridges their essential character. In making this assumption the Court supposed that the cartridge was a simple ink container, similar to an ink-filled cartridge for a fountain pen, and did not play any further role in the operation of the printer. [44]

94. This assumption can no longer be maintained. Having regard to the dual purpose of the cartridge — namely to contain the ink and to form a functional unit with the printer [45] — it is no longer possible to hold that the ink gives the whole of the ink-cartridge its essential character.

95. As paragraph VIII of the explanatory note to general rule 3(b) of the HS states, the factor which determines the essential character of the goods can vary between different kinds of goods, for example, it may be the nature of the material or the component, its bulk, quantity, weight or value, or the role of the material in relation to the use of the goods. [46]

42 — See paragraph XIII of the explanatory note to general rule 2(b) of the HS (cited above, point 14).

43 — See above, point 5.

44 — See *Turbon International* (cited in footnote 3), paragraphs 27, 28 and 34.

45 — See above, points 60 to 65, 69 and 70, and 81 to 86.

46 — See above, point 15.

96. The nature of the two components of the ink-cartridges is a combination of a functional unit with the printer and consumable material. Both components are of equal importance for the use of the goods. It is not possible to use the ink without the cartridges which have been specially designed for the printer. Although the cartridges may be used without ink, if they are empty they do not fulfil purpose of the print process. Given this point, questions of the bulk, quantity, weight and value of the two components become less important.

97. It is settled case-law that to answer the question as to whether a component of goods gives them their essential character, it is necessary to determine whether the product would retain its characteristic properties if one or other of its constituents were removed from it. [47]

98. The national court has found that the essential characteristic of the ink-cartridges is that they are designed to supply ink which is suitable for the system to the print head as part of a print system in which all the elements depend on one another. As held above, however, neither of the two components gives this character without the other component.

99. It follows that neither of the two components alone gives the ink-cartridge its essential character. In such a case general rule 3(b) of the CN refers one to general rule 3(c) of the CN.

100. General rule 3(c) of the CN provides that when goods cannot be classified by reference to general rule 3(a) or (b) of the CN, they shall be classified under whichever of the relevant headings occurs last in numerical order in the CN. [48]

101. Accordingly, the ink-cartridges are to be classified under CN heading 8473.

102. So far as classification under a subheading is concerned, the only possibility is CN subheading 8473 30 90.

47 — See *Turbon International* (cited in footnote 3), paragraph 26; Case C-288/99 *VauDe Sport* v *Oberfinanzdirektion Koblenz* [2001] ECR I-3683, paragraph 25; and Case 253/87 *Sportex* v *Oberfinanzdirektion Hamburg* [1988] ECR 3351, paragraph 8.

48 — See above, point 5.

V — Conclusion

103. On the basis of the foregoing considerations I would suggest to the Court that it should answer the question referred by the Hessisches Finanzgericht as follows:

'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 1734/96 of 9 September 1996, is to be interpreted as meaning that ink-cartridges such as those the subject of the main proceedings — consisting of plastic casing, foam, a metal screen, seals, tape seal, a label, ink and packing material — which, as regards both the cartridge and the ink, could only be used in a printer with the same characteristics as Epson Stylus Colour ink-jet printers, are to be classified under subheading 8473 30 90 of the Combined Nomenclature.'