JUDGMENT OF THE COURT (Third Chamber)

11 December 2008 *

In Joined Cases C-362/07 and C-363/07,

REFERENCES for a preliminary ruling pursuant to Article 234 EC from the Tribunal d'instance du VII[e] arrondissement de Paris (France), made by decision of 24 July 2007, received at the Court on 2 August 2007, in the proceedings

Kip Europe SA and Others (C-362/07),

Hewlett Packard International SARL (C-363/07)

v

Administration des douanes — Direction générale des douanes et droits indirects,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Ó Caoimh, J.N. Cunha Rodrigues, U. Lõhmus (Rapporteur) and A. Arabadjiev, Judges,

* Language of the case: French.

Advocate General: P. Mengozzi,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 5 June 2008,

after considering the observations submitted on behalf of:

— Kip Europe SA and Others, by F. Goguel and F. Foucault, avocats,

— Hewlett Packard International SARL, by F. Goguel and F. Foucault, avocats,

— the French Government, by G. de Bergues and A.-L. During, acting as Agents,

— the Netherlands Government, by C.M. Wissels and D.J.M. de Grave, acting as Agents,

— the Polish Government, by T. Nowakowski, acting as Agent,

— the Commission of the European Communities, by G. Wilms, acting as Agent, and by F. Tuytschaever, advocaat,

after hearing the Opinion of the Advocate General at the sitting on 17 July 2008,

gives the following

Judgment

1 The references for a preliminary ruling concern the interpretation of the combined nomenclature constituting 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 Regulation (EC) No 1719/2005 of 27 October 2005 (OJ 2005 L 286, p. 1; 'the CN'), and the validity of Commission Regulation (EC) No 400/2006 of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 70, p. 9).

2 These references have been made in the context of two disputes between, on the one hand, Kip Europe SA and Others ('Kip and Others') and, on the other, Hewlett Packard International SARL ('Hewlett Packard') and the Administration des douanes — direction générale des douanes et droits indirects (Customs Administration — Directorate-General of Customs and Indirect Taxes) ('the administration des douanes') concerning the tariff classification, with effect from July 2006, of multi-function machines imported into the European Community under different trade names.

Legal context

3 The CN, established by Regulation No 2658/87, is based on the international Harmonised Commodity Description and Coding System ('the HS') drawn up by the Customs Cooperation Council, now the World Customs Organisation, and established by the International Convention concluded at Brussels on 14 June 1983 and approved on behalf of the Community by Council Decision 87/369/EEC of 7 April 1987 (OJ 1987 L 198, p. 1). The CN takes six-digit headings and subheadings from the HS, only the seventh and eighth digits forming subdivisions that are specific to it.

4 In accordance with the first subparagraph of Article 2 of Regulation No 1719/2005, which introduced a new version of the CN, that regulation entered into force on 1 January 2006. It was impliedly repealed, with effect from 1 January 2007, by Commission Regulation (EC) No 1549/2006 of 17 October 2006 amending Annex I to Regulation No 2658/87 (OJ 2006 L 301, p. 1).

5 Part One of the CN contains preliminary provisions. In that part, Section I, which contains general rules, subsection A, entitled 'General rules for the interpretation of the [CN]' ('the general rules'), provides:

'Classification of goods in the [CN] 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.

…

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) …

(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.

…'

6 Part Two of the CN, which contains the table of customs duties, includes Section XVI, headed

'Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles'.

7 Under Note 3 to Section XVI:

'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.'

8 Section XVI contains Chapters 84 and 85. The first includes nuclear reactors, boilers, machinery and mechanical appliances, and parts thereof. The second concerns machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.

9 Under Note 5 to Chapter 84:

'(A) For the purposes of heading 8471, the expression "automatic data-processing machines" means:

…

(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 8471 [of the CN ('heading 8471')].

(D) Printers, keyboards, X-Y coordinate 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 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.'

10 Tariff heading 8471 is worded as follows:

‘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:

8471 60 20— — Printers

8471 60 80— — Other

…’

11 Section XVIII of the CN includes, inter alia, Chapter 90, which concerns optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.

12 Tariff heading 9009 of the CN ('Heading 9009') is worded as follows:

'9009 Photocopying apparatus incorporating an optical system or of the contact type and thermo-copying apparatus:

…

9009 12 00— — Operating by reproducing the original image via an intermediate onto the copy (indirect process)

…'

13 At the time material to the main proceedings, the rate of customs duties on imports applicable to tariff subheading 9009 12 00 was 6%, while machinery coming under tariff subheading 8471 60 20 was exempt from duty.

14 The Commission of the European Communities adopted Regulation No 400/2006 in order to ensure uniform application of the CN in respect of the goods referred to therein.

15 Under point 4 of the Annex to that regulation:

A multifunctional apparatus capable of performing the following functions: — scanning, — laser printing, — laser copying (indirect process).	9009 12 00	Classification is determined by General Rules 1, 3(c) and 6 for the interpretation of the Combined Nomenclature, Note 5(E) to Chapter 84 and the wording of CN codes 9009 and 9009 12 00.
The apparatus, which has several paper feed trays, is capable of reproducing up to 40 A4 pages per minute. The apparatus operates either autonomously (as a copier) or in conjunction with an automatic data-processing machine or in a network (as a printer, a scanner and a copier).		The apparatus has several functions none of which are considered to give the product its essential character.

The actions in the main proceedings and the questions referred for a preliminary ruling

Case C-362/07

16 Kip and Others imported into France apparatus comprising, in a single housing, a large-format-document laser printer module, a large format digital scanner module ('the scanner module') and a computer running on the Windows operating system, connectable to all kinds of network environments. Each apparatus incorporates all the hardware and software elements needed to perform the various functions, which may be purchased in part or in their entirety by the customer, to whom a code is attributed by reference to the option chosen, an option that can be extended at any time by the attribution of a different code.

17 It is apparent from the observations of Kip and Others that those machines are intended for use by undertakings drafting plans, such as design offices, architects and surveyors. It enables those undertakings, working with specific software, to print plans on the printer linked to their computer over their local network or to digitalise existing plans in order to enter them in computers on their local network and work on them. However, the idea of using those machines as stand-alone photocopiers is purely marginal.

Case C-363/07

18 Hewlett Packard imported into France a number of models of multi-function colour and monochrome printers comprising, in a single housing, a laser printer module and a

scanner module having the functional capabilities of printing, digitalisation and copying. Those machines are connectable to computers and receive and process signal code data which are used in the data-processing environment.

19 It is apparent from Hewlett Packard's observations that those multi-functional printers are intended for home use and for small and medium-sized enterprises and that they are basically intended to be connected either directly or via a network to one or a number of computers.

Facts common to the cases

20 By six binding tariff opinions ('BTOs') issued, respectively, on 21 July 2006 at the request of Kip and Others and on 30 October 2006 at the request of Hewlett Packard, the administration des douanes took the view that the various machines mentioned above constituted electrostatic photocopying apparatus operating by reproducing the original image via an intermediate onto the copy, which were to be classified in tariff subheading 9009 12 00. The customs duties on imports applicable to that tariff subheading were 6%.

21 The importing companies brought proceedings against the administration des douanes, seeking the annulment of those BTOs. Principally, they submit that the machines in question should be classified under tariff subheading 8471 60 of the CN on the basis of General Rule 3(b), since the print module or, at the very least, the print module and the scanner module give it its essential character. In the alternative, they submit that the digital copy function carried out principally as an input and output unit

of an automatic data-processing machine would as such fall within subheading 8471 60 and that, under the criterion of the principal use of the apparatus, it is appropriate to decide that print function is the main function and the subsidiary function is that of an input and output unit of an automatic data-processing machine falling as such within subheading 8471 60, which benefits from an exemption from duty. Furthermore, those companies take the view that Regulation No 400/2006 is unlawful in that it bases the classification laid down in point 4 of the Annex thereto on the premiss that the apparatus referred to does not have a particular function which gives it its essential character.

22 The administration des douanes takes the view that Note 5(E) to Chapter 84 excludes any possibility of classification of the products concerned in the main proceedings under heading 8471, in so far as those products perform a specific function other than data processing. It submits that General Rule 3(b) is of no use for tariff classification of the products at issue, since it is not possible to determine whether a material or component of those products gives them their 'essential character' within the meaning of that rule. It also submits that the European Commission made a statement to that effect in Regulation No 400/2006 in respect of classification for similar goods. The administration des douanes based its issue of the BTOs at issue in the main proceedings, inter alia, on that regulation, classifying the machines concerned under subheading 9009 12 00.

23 In those circumstances, the tribunal d'instance du VII[e] arrondissement de Paris decided to stay the proceedings and refer the following questions to the Court, in Case C-362/07, for a preliminary ruling:

'1. Does the copy function of a multifunction apparatus of the kind described in these proceedings, designed to operate through a direct connection or a network with

one or more computers, but capable, as regards the copying function only, of operating autonomously, constitute a "specific function other than data processing" within the meaning of Note 5(E) to Chapter 84 of the [CN]?

2. In the event of an affirmative answer to the first question, does the existence of that specific function, which is expressly acknowledged not to give the product its essential character, mean that classification in Chapter 84, pursuant to Note 5(E), is to be excluded, despite the existence of printing and scanner functions associated with data processing?

3. If that is the case, and in relation to equipment made up of three materially distinct modules (printer, scanner and computer), should the classification not be made on the basis of General Rule 3(b)?

4. More generally, on a correct interpretation of the [HS] and of the [CN], must printers of the kind described in this procedure be classified under heading 8471 60 or 9009 12 00?

5. Is it not the case that … Regulation … No 400/2006 … is invalid, in particular because it is contrary to the [HS], to the [CN] and to Rules 1 and 3(b) of the General Rules for the Interpretation of the Harmonised System and the Combined

Nomenclature, in so far as it relies on the concept of a "function that gives the apparatus its essential character" and its effect would be to classify printers of the kind described under [sub-]heading 9009 12 00?'

24 With regard to Case C-363/07, the tribunal d'instance du VII[e] arrondissement de Paris also decided to stay the proceedings and refer questions to the Court for a preliminary ruling, identical to those set out above with the exception of the third question, which reads as follows:

'3. If that is the case, and in relation to equipment made up of two materially distinct modules (printer and scanner), should the classification not be made on the basis of General Rule 3(b)?'

The questions referred

The first questions

25 By those questions, the referring court asks, essentially, whether Note 5(E) to Chapter 84 of the CN is to be interpreted as meaning that machines such as those at issue in the main proceedings are to be deemed to be performing a 'specific function other than data processing' within the meaning of that note since, apart from the printing and

electronic scanning functions which they carry out in connection with an automatic data-processing machine, they also have an autonomous copying function.

26 It is appropriate to bear in mind settled case-law, in accordance with which, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes (see, inter alia, Case C-142/06 *Olicom* [2007] ECR I-6675, paragraph 16, and the case-law cited).

27 Both the notes which head the chapters of the Common Customs Tariff and the Explanatory Notes to the SH are important means of ensuring the uniform application of the Tariff and as such may be regarded as useful aids to its interpretation (see Case C-11/93 *Siemens Nixdorf* [1994] ECR I-1945, paragraph 12; Case C-382/95 *Techex* [1997] ECR I-7363, paragraph 12; Case C-339/98 *Peacock* [2000] ECR I-8947, paragraph 10; and *Olicom*, paragraph 17).

28 In the present case, the wording of heading 8471, under which, according to both Kip and Others and Hewlett Packard, the machines at issue in the main proceedings fall, refers, inter alia, to automatic data-processing machines and units thereof, while the wording of heading 9009, under which, in the view of the French, Dutch and Polish Governments and the Commission, those machines should be classified, concerns photocopying apparatus incorporating an optical system or of the contact type and thermo-copying apparatus.

29 In that regard, those governments and the Commission take the view that the classification of the machines at issue in the main proceedings under heading 8471 is impossible, having regard to Note 5(E) to Chapter 84 of the CN, because, since they can be used to make photocopies without being connected to an automatic data-processing machine, they perform a 'specific function other than data processing' within the meaning of that note.

30 However, that argument cannot be accepted.

31 Under Note 5(E) to Chapter 84 of the CN, '[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'.

32 It follows from the wording of Note 5(E) to Chapter 84 of the CN that the 'specific function' performed by a machine working with an automatic data-processing machine must be a function 'other than data processing' (see *Olicom*, paragraph 30).

33 Furthermore, it follows from the general scheme and purpose of that note that the expression 'are to be classified in the headings appropriate to their respective functions' does not seek to have one function take priority over others also performed by the apparatus to be classified and which also constitute data processing, but to prevent

apparatus whose function has nothing to do with data processing from being classified under heading 8471 for the sole reason that they incorporate an automatic data-processing machine or work in connection with such a machine.

34 That interpretation is confirmed by the judgment in Case C-467/03 *Ikegami* [2005] ECR I-2389, paragraphs 25 and 26, in which the Court held that a machine whose basic equipment enables it to perform automatic data processing must nevertheless be considered to have a specific function within the meaning of Note 5(E) to Chapter 84 of the CN since, as equipped, it cannot be used for purposes other than the recording and reproduction of images and sounds in the course of video surveillance, as it lacks sufficient software.

35 However, it is apparent from the documents before the Court in the present proceedings that the machines at issue in the main proceedings, in addition to their copying function which is not data processing, also have printing and scanning functions.

36 Consequently, the answer to the first questions referred must be that Note 5(E) to Chapter 84 of the CN is to be interpreted as meaning that only machines incorporating an automatic data-processing machine or working in conjunction with such a machine, whose function is not data processing, perform 'a specific function other than data processing'.

The second questions

37 It follows from the wording of those questions that they were referred in the event of it following from the answer to the first questions referred that the copying function of a multi-function apparatus such as that at issue in the main proceedings constitutes a 'specific function other than data processing' within the meaning of Note 5(E) to Chapter 84 of the CN. Since that is not the case, there is no need to answer the second questions referred.

The third and fourth questions

38 By these questions, which can be dealt with together, the referring court asks, essentially, whether machines such at those at issue in the main proceedings are to be classified under heading 8471, which covers, inter alia, the units of an automatic data-processing machine, or under heading 9009, which concerns photocopiers. In that regard, that court also asks whether the classification is to be made by application of General Rule 3(b).

39 In order to answer those questions, it is necessary to state, as a preliminary point, that, as is apparent from the wording of General Rule 1, for legal purposes, classification is determined according to the terms of the headings and any relative section or chapter notes, before the other provisions of the General Rules come to bear. General Rule 3 applies only when it is apparent that goods must be classified under a number of headings.

40 It is apparent from an examination of the characteristics of the machines at issue in the main proceedings as described by the referring court that they all comprise, in a single housing, a laser printer module and a scanner module. In addition, the machines imported by Kip and Others are equipped with a computer running on the Windows operating system and are used to process large-format documents, while those imported by Hewlett Packard are intended for home use and for small and medium-sized enterprises. Nevertheless, irrespective of their intended end-use, all the machines at issue in the main proceedings are characterised by the fact, firstly, that they perform printing and electronic scanning functions in connection, directly or over a network, with automatic data-processing machines and, secondly, that the copying function which they have is used autonomously.

41 Accordingly, those machines are likely simultaneously to meet the three requirements laid down in Note 5(B)(a) to (c) to Chapter 84 of the CN for them to be considered units forming part of an automatic data-processing system, that is to say to be of a kind used solely or principally in an automatic data-processing system, capable of connection to the central processing unit and receiving or supplying data in a form usable by that system.

42 Firstly, the reference to Note 5(B) cannot be excluded in the present case because, according to its wording, it applies subject to the provisions of Note 5(E) since, as is apparent from paragraph 35 of the present judgment, the application of that latter note is excluded because, in addition to the copying function, which is not data processing, the machines at issue in the main proceedings are also equipped with printing and electronic scanning functions.

43 Secondly, although it is true that the machines at issue in the main proceedings are not of the kind used 'solely … in an automatic data-processing system' within the meaning of Note 5(B)(a) to Chapter 84 of the CN, the fact remains that they are likely to be considered of the kind used 'principally' in such a system within the meaning of the same note.

44 In the present case, it is apparent from the description of the characteristics of those machines that most of the functions which they perform, that is to say, printing and electronic scanning, can be used only in connection with an automatic data-processing machine. Accordingly, those machines are likely to be of a kind used principally in an automatic data-processing system.

45 Nevertheless, the Court does not have sufficient information to enable it to evaluate the importance of the copying function performed by the machines at issue in the main proceedings in relation to the other two functions.

46 It is therefore for the referring court to assess, taking into account the objective characteristics of those machines such as the print and reproduction speeds, the existence of an automatic page feeder for originals to be photocopied or the number of paper feeder trays, whether the copying function is secondary in relation to the other two functions or whether, on the contrary, it is equivalent in importance.

47 If the copying function is secondary in relation to the other two functions, those machines should be considered units of automatic data-processing machines within the meaning of Note 5(B) to Chapter 84 of the CN, which, if they are presented in isolation, fall within heading 8471, by application of Note 5(C) to the same chapter. In such a case, the relevant subheading within heading 8471 will have to be identified by application of Note 3 to Section XVI of the CN, in accordance with which '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'.

48 However, if the copying function of the machines at issue in the main proceedings is of an equivalent importance to that of their other two functions, those machines could not be considered units of automatic data-processing machines because they do not meet the condition laid down in Note 5(B)(a) to Chapter 84 of the CN, that is to say, that they be 'of a kind solely or principally used in an automatic data-processing system'.

49 In such a case, machines made up of different components, that is to say either a printer module and a scanner module, or a printer module, a scanner module and a computer module, should be classified, by application of General Rule 3(b), according to the module which, of those two or three modules, is identified as determining their essential character, provided such identification is possible. If that is not the case, in accordance with General Rule 3(c), they are to be classified under the heading which occurs last in numerical order among those which equally merit consideration.

50 It follows that each of the machines at issue in the main proceedings should be classified under heading 9009 only if it is apparent, on the basis of its objective characteristics, that it is not of a kind used principally in an automatic data-processing system, since the copying function is of an importance equivalent to that of the other two functions, and that it proves impossible to determine which, of the printing module or the scanner module or even, if applicable, the computer module, gives it its essential character.

51 That conclusion cannot be called into question by the argument raised as a subsidiary point by the French and Netherlands Governments and by the Commission that if it is possible to classify the machines at issue in the main proceedings under heading 8471, it would also be possible to classify them under heading 9009.

52 Those parties submit that those machines should be classified under heading 9009 by application of General Rule 3(c). In that regard, they refer to Case C-67/95 *Rank Xerox* [1997] ECR I-5401, where the Court held that, in accordance with the version of the Combined Nomenclature applicable to the case which gave rise to that judgment, machines comprising a scanning device, a digital storage device and a printing device fall within subheading 9009 12 00.

53 Nevertheless, it must be observed, firstly, that, unlike the present disputes in the main proceedings, which relate to machines capable of falling within heading 8471, since the conditions laid down in Note 5(B) to Chapter 84 of the CN must be taken into consideration in that regard, the machines at issue in the case which gave rise to the judgment in *Rank Xerox* could have been classified either under heading 8472 of the CN as office machinery, or under heading 8517 of the CN as telecommunications apparatus operating by carrier signal, or even under heading 9009 as photocopying machines.

54 Accordingly, since the functions performed by the latter machines are not data processing, the notes to Chapter 84 of the CN relating to classification of units of automatic data-processing machines did not apply to them.

55 Secondly, it is not apparent from the description of those machines that they were, like those at issue in the main proceedings here, made up of different components. For that reason, General Rule 3(b) would not have been applicable either for the purposes of classification of the machines at issue in the *Rank Xerox* case.

56 Consequently, the answer to the third and fourth questions referred must be that, if the copying function performed by the machines at issue in the main proceedings is secondary in relation to the printing and electronic scanning functions, they must be considered units of automatic data-processing machines within the meaning of Note 5(B) to Chapter 84 of the CN which, by application of Note 5(C) to that chapter, if they are presented in isolation, fall within heading 8471. In such a case, the relevant sub-heading must be determined in accordance with Note 3 to Section XVI of the CN. However, if the importance of that copying function is equivalent to that of the other two functions, those machines must be classified, by application of General Rule 3 (b), under the heading corresponding to the module which gives those machines their essential character. If such identification is not possible, they must be classified under heading 9009 in accordance with General Rule 3(c).

The fifth questions

57 By these questions, the referring court seeks a ruling from the Court on the validity of the classification made in point 4 of the Annex to Regulation No 400/2006, in particular in the light of General Rules 1 and 3(b) for the interpretation of the HS and General Rules 1 and 3(b), in so far as it relies on the concept of a 'function that gives the apparatus its essential character' and its effect would be to classify the machines at issue in the main proceedings under subheading 9009 12 00.

58 It is apparent from the terms in which those questions are drafted that the referring court takes the view that, with regard to the multi-functional machines at issue in the main proceedings, it is the printing function which is decisive for the purposes of their classification. It refers to 'printers of the kind described [in the present proceedings]'. In that context, that court doubts the validity of point 4 of the Annex to Regulation No 400/2006, which classified machines performing printing, electronic scanning and copying functions under subheading 9009 12 00, which covers photocopiers.

59 It is apparent from case-law, firstly, that a classification regulation, such as Regulation No 400/2006, is adopted by the Commission when the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute and, secondly, such a regulation is of general application in so far as it does not apply to an individual trader but, in general, to products identical to the one thus classified (see, to that effect, Case C-119/99 *Hewlett Packard* [2001] ECR I-3981, paragraphs 18 and 19).

60 It is also apparent from case-law that, in the interpretation of a classification regulation, in order to determine its scope, account must be taken inter alia of the reasons given (see *Hewlett Packard*, paragraph 20 and the case-law cited).

61 With regard to point 4 of the Annex to Regulation No 400/2006, it follows from the second paragraph of the reasons for that point that it applies only in the event that none of the functions performed by the machine to be classified gives it its essential character.

62 Accordingly, since it classifies machines capable of performing printing, electronic scanning and reproduction operations under subheading 9009 12 00 by application of General Rules 1, 3(c) and 6, of Note 5(E) to Chapter 84 of the CN and of the wording of heading and subheading 9009 and 9009 12 00, on the ground that none of the functions corresponding to those operations can be regarded as a giving those machines their essential character, without, in principle, requiring all machines having those three functions to be classified as photocopiers, Regulation No 400/2006 is valid.

63 Consequently, it must be held that an examination of the fifth questions referred has not raised any factor liable to affect the validity of point 4 of the Annex to Regulation No 400/2006.

Costs

64 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **Note 5(E) to Chapter 84 of the combined nomenclature constituting 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 1719/2005 of 27 October 2005, is to be interpreted as meaning that only machines incorporating an automatic data-processing machine or working in conjunction with such a machine, whose function is not data processing, perform 'a specific function other than data processing'.**

2. **If the copying function performed by the machines at issue in the main proceedings is secondary in relation to the printing and electronic scanning functions, they must be considered units of automatic data-processing machines within the meaning of Note 5(B) to Chapter 84 of the combined nomenclature constituting Annex I to Regulation No 2658/87, as amended by Regulation No 1719/2005, which units, by application of Note 5(C) to that chapter, if they are presented in isolation, fall within heading 8471. In such a**

case, the relevant subheading must be determined in accordance with Note 3 to Section XVI of the said nomenclature. However, if the importance of that copying function is equivalent to that of the other two functions, those machines must be classified, by application of General Rule 3(b) of the General rules for the interpretation of that nomenclature, under the heading corresponding to the module which gives those machines their essential character. If such identification proved impossible, they must be classified under heading 9009 in accordance with General Rule 3(c).

3. Examination of the fifth questions referred has not raised any factor liable to affect the validity of point 4 of the Annex to Commission Regulation (EC) No 400/2006 of 8 March 2006 concerning the classification of certain goods in the Combined Nomenclature.

[Signatures]