

OPINION OF ADVOCATE GENERAL  
LA PERGOLA

delivered on 12 December 1996 \*

I — Introduction

1. In these proceedings, the Tariefcommissie seeks a ruling from the Court on the correct classification in the Common Customs Tariff of machines which combine the functions of photocopiers and fax machines and use a digital process for that purpose.

by means of a scanner which records the data of the document to be reproduced and memorizes them in the form of digital units. The data thus stored can be retrieved for the purpose of printing on paper.

3. The plaintiff subsequently objected to its own declaration, with a view to securing classification of the apparatus in question under subheading 8472 90 90 of the Common Customs Tariff.

II — The facts

2. According to the order for reference, in January 1992 the plaintiff in the main proceedings imported the machines at issue in this case — namely Xerox 3010 and Xerox 3010 Editor machines — specifying heading 9009 21 00 for the purpose of customs classification. The order for reference indicates that those machines can both send faxes and make photocopies. The Xerox 3010 Editor can also process the pictures obtained. Both the machines at issue photocopy the image

However, on 2 July 1992 the defendant, by the decision contested in the main proceedings, confirmed the earlier classification. The plaintiff then commenced proceedings against that decision before the Tariefcommissie. That court seeks a preliminary ruling from the Court of Justice on the following question:

\* Original language: Italian.

'How is the Common Customs Tariff, as amended by Regulation (EEC) No 2587/91,

to be interpreted for the purposes of the tariff classification of the Xerox 3010 and Xerox 3010 Editor machines described in the body of the present reference?’

wrapping machines, pencil-sharpening machines, perforating or stapling machines):

8472 10 00 — Duplicating machines

### III — The relevant legislation

...

Commission Regulation (EEC) No 2587/91 of 26 July 1991 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff<sup>1</sup> (hereinafter ‘Regulation No 2587/91’) contains the following headings:

8472 90 — Other:

8472 90 10 — — Coin-sorting, coin-counting or coin-wrapping machines

#### 4. ‘Section XVI

8472 90 90 — — Other

... Chapter 84 ...

...’

8472 Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic bank-note dispensers, coin-sorting machines, coin-counting or

5. Regulation No 2587/91 also includes the following:

‘Section XVIII

1 — OJ 1991 L 259, p. 1.

... Chapter 90 ...

- 9009      Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus:      9009 22      — — Of the contact type:
- ...
- Electrostatic photocopying apparatus:
- 9009 30 00 — Thermo-copying apparatus'.
- 9009 11 00 — — Operating by reproducing the original image directly onto the copy (direct process)
6. The general rules laid down by Regulation No 2658/87 (hereinafter 'the general rules'), which also apply to Regulation No 2587/91, provide as follows:
- 9009 12 00 — — Operating by reproducing the original image via an intermediate onto the copy (indirect process)
- 'A. General rules for the interpretation of the combined nomenclature
- Other photocopying apparatus:
- 9009 21 00 — — Incorporating an optical system
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) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(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 or to part only of the items in a set put up for retail

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

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character in so far as this criterion is applicable.

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

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

...

7. The notes to section XVI of the Customs Tariff contained in Regulation No 2587/91 state:

'1. This section does not cover:

...

(m) Articles of Chapter 90;

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.

...

...?

2. ...

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the

8. The annex to Commission Regulation (EEC) No 3417/88 of 31 October 1988 concerning the classification of certain goods in the combined nomenclature<sup>2</sup> (hereinafter 'Regulation No 3417/88') states:

Description of the goods	Classification CN code	Reasons
(1) 2. Electronic system for printing from digital data	(2) 8472 90	(3) Classification is determined by the provisions of general rule 1 and the texts of CN codes 8472 and 8472 90 90. A laser beam discharges selectively a pre-charged electro-sensitive surface corresponding to the required image. Negatively charged particles of dry ink are then applied to the photoreceptor where they adhere to the positive area to form the desired image. This image is then transferred onto a positively charged sheet of paper, and subsequently fixed by heat. Heading 9009 does not apply as the print is produced directly from digital data and not by means of an original document.

9. The annex to Commission Regulation (EC) No 1165/95 of 23 May 1995 concerning the classification of certain goods in the combined nomenclature<sup>3</sup> (hereinafter 'Regulation No 1165/95'), states:

Description of goods	Classification CN code	Reason
<p>6. A laser copier comprising mainly a device for scanning (scanner), a digital image processing device and a printing device (laser printer), contained in a housing.</p> <p>The scanning device uses an optical system, consisting of a lamp, mirrors, lenses and photocells to scan the original image line by line.</p> <p>The copies are produced electrostatically via a drum on the laser printer using the indirect process. The laser copier has several additional features for altering the original image, e. g. reduction, enlargement, shading</p>	<p>9009 12 00</p>	<p>Classification is determined by the provisions of General Rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 9009 and 9009 12 00</p>

IV — Analysis of the dispute

pretation<sup>4</sup> of Regulation No 2587/91. Regulation No 1165/95 is intended to clarify the

10. In my view, the answer to the question referred to the Court by the national court is to be found in Regulation No 1165/95 itself: although adopted after the material time, it may be regarded as providing a reliable inter-

3 — OJ 1995 L 117, p. 15.

4 — According to the preamble to Regulation No 1165/95, the reason for its adoption is that 'Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods; ... pursuant to the said general rules, the goods described in column 1 of the table annexed to the present regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3'.

classification of certain goods, including the machines in question, in the Common Customs Tariff. The provisions of that regulation, having been adopted by the legislature in order to provide an authentic interpretation, are in turn binding on anyone interpreting the Treaty and Community law. On the basis of Regulation No 1165/95, the machines whose specification is in dispute in this case are therefore to be classified under subheading 9009 12 00.

11. In the event of the Court not accepting that Regulation No 1165/95 provides an authentic interpretation of Regulation No 2587/91, I shall now set out further reasons for reaching the conclusion given above regarding classification of the machines at issue.

The plaintiff's arguments focus essentially on two points. It alleges first that the machines in question cannot be regarded as photocopiers incorporating an optical system, with the result that they cannot, in view of their photocopying function, be treated as apparatus as of the kind covered by heading 9009.

The second argument is that the characteristics of the machines in question correspond to those of subheading 8472 90. According to the plaintiff, it follows that general rule for interpretation 3(c) cannot be applied to this case. The machines to be classified

should therefore be regarded as falling within heading 8472 90.

12. According to the plaintiff, the machines in question cannot be regarded as optical reproduction systems since they are not traditional photocopying machines. Machines like the Xerox 3010, says the plaintiff, convert the image into new digital data and cannot therefore be treated in the same way as the systems used by normal photocopying machines.

To my mind, that view cannot be upheld. Moreover, as the Commission has pointed out, heading 9009 covers not only photocopiers incorporating an optical system and direct reproduction, like those covered by subheading 9009 11 00 but also others which achieve that result by means of an intermediate, which are classified under subheading 9009 12 00. The latter subheading covers instruments which can reproduce a document by means of an indirect process. In this case, the intermediate stage in the reproduction process consists of conversion of the image into digital data. It is irrelevant that the indirect process employed by the Xerox 3010 and Xerox 3010 Editor machines uses very advanced technology since, as the Court has made clear elsewhere,<sup>5</sup> the application of

<sup>5</sup> — See Case 122/80 *Analog Devices v Hauptzollamt München-Mitte and Hauptzollamt München-West* [1981] ECR 2781.

technological innovations does not in itself change the customs classification of the product concerned.

to which the Xerox machines at issue are put appear in any way similar to that covered by heading 8472.

It follows that those machines, at least as regards the reproduction of documents (the photocopying function), can legitimately be included under heading 9009, and, in particular, under subheading 9009 12 00.

13. The second point concerns the possibility of treating the machines in question as corresponding to those classifiable under subheading 8472 90. They are office machines, with which heading 8472 is concerned on a wholly residual basis. From the description of the apparatus covered by that heading, which is given by the Customs Tariff merely by way of example, it appears that such instruments are essentially mechanical in their structure and operation and therefore do not fully display the characteristics inherent in the machines to be classified in this case. The machines at issue here are, by contrast, made up of electronic components and, on close examination, their mechanisms cannot be assimilated to the simpler structure which typifies the residual category covered by heading 8472. Nor does the purpose

14. In my opinion, the plaintiff's reference to Regulation No 3417/88 does not avail it. The classification for which that regulation provides relates to electronic systems for printing from digital data, not photocopiers of documents. It is significant that that classification places emphasis on the source from which the printing derives: if it is simply from digital data and not photocopies of original documents, Regulation No 3417/88 excludes the application of heading 9009. In other words, it is to be inferred from the note setting out the reasons for the classification that if the printing process is based, albeit with an intermediate digital stage, on photocopied original documents, the appropriate classification is not subheading 8472 90 90 but heading 9009. Even though the description corresponding to heading 8472 is drafted in rather general terms, and not without some ambiguity, I therefore consider that machines of the kind at issue in this case cannot be included under that heading.

15. The fax function of the machines at issue should be taken into account. In view of that function, it becomes important, although not decisive, for the Court's examination, as I shall explain, to analyse heading 8517 which relates to electrical apparatus for line tele-



phony or line telegraphy, a category which includes fax machines.

16. Under what heading therefore should the Xerox machines at issue here be classified?

The defendant's contention can be immediately disposed of: subheading 9009 21 00 relates to an exclusively optical, rather than electrostatic, photocopying process, and does not therefore cover the characteristics of the machines in question.

It therefore remains to consider which of the remaining possibilities of classification, in accordance with the provisions of the Community customs nomenclature, is most appropriate here.

17. The general rules for interpretation of the Common Customs Tariff provide useful criteria for direct classification of the machines. This applies in particular to rule No 3.

The plaintiff considers that, by reason of their composite nature, the machines in question do not fall into either of the categories considered first above, relating respectively to photocopying machines and fax machines. In its view, subheading 8472 90 90 of the Customs Tariff is the only appropriate classification. Accordingly, in the plaintiff's opinion, it would not therefore be possible to apply general rule 3(c), as advocated by the Commission, according to which, where a product is capable of being classified under several headings, the last one is to be preferred.

More specifically, the plaintiff regards as applicable to this case note 3 to section XVI of the Customs Tariff, which takes account of the *principal* function performed by machines with more than one function; the (prevailing) characteristic of the apparatus in question is, in its view, that of *office machines*, not classifiable elsewhere.

However, in my opinion, that tariff provision is not relevant here. Paragraph 1(m) of the explanatory notes to section XVI, which includes subheading 8472 90 90 but not heading 9009, indicates that that section does not include articles of Chapter 90. Accordingly, as noted earlier, there is no possibility of applying subheading 8472 90 90 to the

machines in question, since they are apparatuses which without doubt perform photocopying functions.

Moreover, it might be conceded, for the sake of argument, that the limiting criterion laid down in note 1(m) was not applicable to this case and that therefore, in deciding the matter, account could be taken of note 3. Classification of the machines in question would therefore be made in accordance with the criterion of the principal function laid down in note 3. However, note 3 to section XVI cannot be applied here because it is impossible, from the documents at present before the Court, to establish the prevalent function performed by the machines in question. Consequently, the appropriate heading must be chosen by reference to the criterion laid down in general rule 3.

18. Accordingly, the matter must be resolved by reference to general rule No 3.

According to general rule 3, and in particular paragraph (c), the machines at issue in this case are to be classified under the last of the subheadings which appear in theory to be applicable. Thus, on the basis that the machines in question may, at least in part, be classified, as a result of their multiple functions, either under heading 8517, which covers electrical apparatus for line telephony or line telegraphy, a category into which fax machines fall, or under heading 9009, which covers photocopiers, or again, to grant the benefit of the doubt, under subheading 8472 90 90, contended for by the plaintiff, recourse must in any event be had to heading 9009, and specifically to subheading 9009 12 00, for proper classification of the machines at issue, since that is the last in numerical order of those of which account could be taken.

## V — Conclusion

19. For the foregoing reasons, I suggest that the following answer be given to the Tariefcommissie:

Xerox 3010 and Xerox 3010 Editor machines are to be classified under subheading 9009 12 00 of the Common Customs Tariff, in the version contained in Regulation (EEC) No 2587/91.