OPINION OF ADVOCATE GENERAL MISCHO

delivered on 11 September 2001 [1]

1. Turbon International GmbH, formerly Kores Nordic Deutschland ('Turbon'), is challenging before the Hessisches Finanzgericht (Finance Court), Hessen, (the 'Finanzgericht') the decision of the German customs authorities, represented by the Oberfinanzdirektion Koblenz (the 'Oberfinanzdirektion'), to classify under heading 3215 'Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid' of the combined nomenclature (the 'CN') ink cartridges without integrated print head, for Epson Stylus Colour ink-jet printers. Those goods consist of an ink cartridge (consisting in turn of a cuboid plastic casing of approximately 2.7 x 6.4 x 4.2 cm, cellular material, metal screen, seals, tape seal, and labels, with a total value of approximately DEM 4), ink (approximately 35 ml) valued at DEM 0.35 and packing materials consisting of a cardboard box inside which is a sealed grey plastic bag. It can only be used in ink jet printers of the abovementioned make, the cartridge and the ink being specially designed for that type of printer.

2. According to Turbon, the cartridges fall within the scope of heading 8473 'Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading Nos 8469 to 8472' of the CN, since they consist of a part or accessory for a printer whose classification under heading 8471 is unchallenged.

3. Considering that the action raised questions of interpretation of Community law and being concerned to preserve the uniformity of that law, taking account, in particular, of the existence of binding tariff information issued by other Member States, the Finanzgericht decided, by order of 21 February 2000, to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is a compatible ink-jet cartridge, consisting of an ink cartridge (plastic casing, cellular material, metal screen, seals, tape seal, labels), ink and packing materials, where both the ink cartridge and the ink can be used solely in an Epson Stylus Colour printer,

1 — Original language: French.

— to be classified under code number 3215 90 80 as a disposable, ink-filled cartridge (without integrated print head) for ink-jet printers,

or

— is that compatible ink-jet cartridge a part or accessory of a printer that is assigned to CN heading No 8471 as an essential unit of an automatic dataprocessing machine, and therefore covered by CN heading No 8473?'

4. In the version of the *Combined Nomenclature* which was in force at the time when the dispute in the main proceedings arose, that is to say the version in Commission Regulation (EC) No 1734/96 of 9 September 1996 amending 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,[2] heading 3215, inserted into Chapter 32 ('Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks') of section VI is as follows:

'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. Headings 8471 and 8473, inserted into Chapter 84 ('Nuclear reactors, boilers, machinery and mechanical appliances;

2 — OJ 1996 L 238, p. 1.

parts thereof') of Section XVI, are 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:	8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading Nos 8469 to 8472:
		...	
...		8473 30	— Parts and accessories of the machines of heading No 8471:
8471 60	— Input or output units, whether or not containing storage units in the same housing:	8473 30 10	— Electronic assemblies
8471 60 10	— — For use in civil aircraft	8473 30 90	— Other'.
	— — Other		
8471 60 40	— — — Printers		
8471 60 50	— — — Keyboards		
8471 60 90	— — — Other		
...			

6. It is plain that ink cartridges for printers are not mentioned as such under either heading 3215 or heading 8473.

7. In order to determine whether they should none the less be classified under those headings, the general rules for the interpretation of the combined nomenclature and the explanatory notes to the harmonised system for the designation and codification of goods, drawn up by the Customs Cooperation Council, now the

World Customs Organisation, must be applied.

8. Amongst the general rules for the interpretation of the combined nomenclature, rules 3 and 5 merit particular attention in light of the question which we are asked.

9. Under rule 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.'

10. Under rule 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 containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the 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 and packing containers(1) presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.'

11. Footnote (1) 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 general rule 5(a)'.

12. In the *explanatory notes to the harmonised system*, a distinction is made as between notes on the general rules and notes on particular headings. The former include, first of all, the note on rule 3(b) under which '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', and the note concerning rule 5(a) which states that:

'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 the 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.'

13. The notes on the general rules also include a note concerning rule 5(b), according to which:

'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.'

14. In the light of the question referred to the Court the note concerning heading 3215 is of particular relevance. Under it:

'This heading does not include:

...

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

(c) inked ribbons for typewriters or ink-pads (heading 96.12).'

and the note concerning heading 8473 which states that '[t]he 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'.

15. In support of the classification of the cartridges at issue under heading 8473, Turbon has submitted a whole series of arguments before both the national court and the Court of Justice.

16. The first relates to the features of the cartridges. These are in the form of a plastic casing specially designed for Epson Stylus

Colour printers. The casing comprises a piece of cellular material which, after filling, absorbs ink in its capillary system, the diameter of the capillaries being specifically calculated on the basis of the cartridge and the surface tension of the ink used in order to prevent leaks and to ensure that the print head has the necessary quantity of ink in order to print.

— The interior of the plastic casing is fitted, upstream of the exit opening, with a metallic screen preventing lumps of ink from reaching the print head and clogging it up.

— On the exterior of the plastic casing, the exit opening is provided with a seal preventing any air from entering after the ink cartridge is fitted. That device prevents the ink from drying out at the same time as ensuring an appropriate channelling of ink from the cartridge towards the print head.

— Finally, the cover closing the back of the cartridge includes a ventilation and pressure compensation system specifically adapted for the cartridge, ink and printer in question. Turbon notes, on that point, that the regular supply to the print head is endangered where there is compensation which is too weak while compensation which is too strong produces, by contrast, an ink leak.

17. In the light of those features, the item in question cannot, according to Turbon, be deemed to be a mere container. Plainly, the cartridges do not only hold ink, but are designed and fitted to ensure an optimal supply of ink to the print head and are to accord with the characteristics of the print head, and they must therefore be deemed to form part of a printer.

18. Although the cartridges do not incorporate a print head, they are wholly comparable to cartridges which do include one and which the Customs authorities regard as printer parts.

19. In any event, the classification of ink cartridges supplied with a print head as printer parts negates the objection to classification of the contested cartridges as a printer part on the ground that a liquid cannot be classified as a printer part.

20. However, even if that classification as a *part* of a printer had to be set aside, the classification under heading 8473 still applies since it should at least be classified as an *accessory* to a printer.

21. It is indeed an interchangeable part or device designed to adapt a machine for a particular operation, in this case for printing, within the meaning of the explanatory note to the harmonised system concerning heading 8473 of the CN.

22. The second of Turbon's arguments relates to the unchallenged classification of toner cartridges for photocopiers under the same heading as photocopiers. According to Turbon, the ink cartridges in question play exactly the same role in a printer as toner cartridges in a photocopier.

23. The third argument is that, even if the cartridges in question may, *prima facie*, just as readily be classified under heading 3215 as under heading 8473, general rule 3(a) on the interpretation of the CN, which requires preference to be given to the more specific heading, requires classification under heading 8473.

24. On that point, Turbon seeks to rely on judgments in *ELBA*,[3] in which preference was given to the heading taking into account the purpose of the goods on the ground that it was more specific, over a heading based on the materials from which the goods were made, in *Thyssen Haniel Logistic*,[4] in which the intended purpose was also held to be decisive, and in *VOBIS Microcomputer*,[5] in which the essential character was determined on the basis of the value and importance of the constituent materials for the purpose of the use of the goods. In the light of the latter judgment, the ratio of 10 to 1 between the value of the casing and that of the ink contained excludes classification of the cartridges as ink.

25. The fourth argument concerns the meaning of a part of a printer. According to Turbon, that classification cannot be reserved to parts of a printer performing the essential functions in the operation of such a machine, that is to say in the printing process, since, on that argument, classification as printer parts would be refused to numerous parts of it, for example, to its cover, which are in no way necessary to the actual printing process.

26. Those arguments advanced by Turbon in favour of the classification under head-

3 — Case 205/80 [1981] ECR 2097.
4 — Case C-459/93 [1995] ECR I-1381.
5 — Case C-121/95 [1996] ECR I-3047.

ing 8473 of the cartridges found a certain favour with the national court, which took note of a series of factors which in its view were likely to preclude the plastic casing in the form in which the cartridge is presented from being deemed to be a mere container for ink.

27. Firstly, the national court notes that the cartridge is not specially shaped to hold ink but, rather, to be fitted in the printer for which it was designed.

28. Secondly, it notes that the cartridges in question are refillable.

29. Thirdly, it finds that the container, namely the casing, and its content, namely the ink, are not separable in the light of the function assigned to the cartridge.

30. It therefore appears to the national court that the classification of the plastic casing as a mere container is not in accordance either with general rule 5(a), to the extent that it is specifically the casing which determines the essential character of the whole, or with general rule 5(b), since the casing is clearly not a container of the type generally used for storing printing ink.

31. In addition, the Finanzgericht does not view the fact that the ink stored in the cartridge is consumed as a barrier to classification as a printer part, since the cartridge, taken as a whole, is used rather than consumed in the printing process.

32. The national court notes that a cartridge has a period of use less than that of a printer, even where it is refilled, but the same goes for other parts of such a machine.

33. The Oberfinanzdirektion challenges those arguments, in addition to a circular by the Germans Customs authorities, by three arguments in support of classification under heading 3215. First of all, it argues that the product to be classified is the ink contained in the cartridge. The ink is a product indispensable to the operation of the printer rather than the cartridge itself, which is only a necessary container in the case of a liquid product. It goes on to stress that since a liquid product is involved and the printer is complete even without the ink cartridge the contested cartridges cannot readily be deemed to constitute printer parts.

34. Only those products which are necessary for the assembly of a machine or are obtained on dismantling it can be designated as parts of machines under Note 2(b) to Section XVI of the CN. The Oberfinanzdirektion contends that the item concerned cannot be in the nature of an accessory. Ink cartridges, it contends, do not enable the printer to carry out a particular operation, since the printing process which they facilitate is, by definition, the normal function of a printer.

35. The Oberfinanzdirektion refute, finally, the reliance placed on the value ratio between the casing and the ink for making the classification, that ratio being relevant only if the objective characteristics of the goods to be classified do not provide, unlike the present case, a solution.

36. Those views are broadly shared by the Commission in its observations. In its opinion, classification under heading 8473 as a part or accessory of a printer, is excluded.

37. As the Court of Justice ruled in the judgment of 19 October 2000 in *Peacock*,[6] the word 'part' implies a 'whole' 'for the operation of which the part is essential', and that is not so in the present case, since the Epson Stylus Colour printer can operate perfectly both from the mechanical and electronic points of view, without the contested ink cartridges.

38. Even without a cartridge, the printer can receive signals issued by a computer, convert them and transmit them to the print head.

39. The sole consequence of the absence of a cartridge is the impossibility of visualising the results of the printing. But that impossibility does not flow from the absence of a cartridge, but from the absence of ink, the proof being that the presence of an empty cartridge in the printer leads to the same result.

40. The Commission also notes that classification of a product as a part of another is unconnected with the fact that the former was designed in response to the technical specification of the latter.

41. Consequently, it is immaterial that the contested cartridges are equipped with an opening designed to maintain the pressure balance, specially designed for the Epson

6 — Case C-339/98 [2000] ECR I-8947.

Stylus Colour printer, as is their complex technical design, owing to their capillary system and cover shape.

42. Classification as an accessory under heading 8473 is similarly excluded, according to the Commission, in view of the explanatory note to the harmonised system concerning that heading, since ink cartridges are not designed to enable the printer to perform a particular operation and do not allow it to increase its range of operations.

43. According to the Commission, heading 3215 prevails, in the light of general rule 5(b) of interpretation of the CN, where, presented separately from the printer, the ink cartridge has no functions other than to hold stock and store the liquid which it contains.

44. In the Commission's view there are no grounds for treating printer cartridges differently from fountain pen cartridges which also in each case are designed for use with a particular pen, sold under a specific brand, and which undoubtedly come under heading 3215 in accordance with the explanatory note to the harmonised system concerning that heading.

45. The Commission does, however, make one qualification, inasmuch as it observes that, if the metal screen in the contested cartridge, the purpose of which is not stated in the order for reference, is a mechanical or electronic element indispensable to the printing process, the classification under heading 8473, as a part for a printer, should be envisaged.

46. The Commission's observations appear to be particularly relevant, both in relation to the impossibility of classifying as a part or accessory of a printer the contested cartridges and in relation to the grounds for their classification under heading 3215.

47. First of all, it should be noted that the Commission and the Oberfinanzdirektion are plainly right in refusing to classify the contested cartridges as accessories to a printer. It is clear that where an ink cartridge is inserted into a printer, the printer is not being adapted for a particular operation, to increase its range of operations or to enable it to perform a particular service relative to the main function of the machine, as set out in the explanatory notes to the harmonised system concerning heading 8473. It is only being allowed to perform the function for which it is specifically designed, that is to print on paper the data sent in the form of signals by a computer.

48. The Commission's observations on classification as a printer part are more

paradoxical, but none the less precise. It is at first sight surprising to read that a printer operates perfectly well without an ink cartridge, the only problem with that mode of operating being that the results of the machine's operations cannot be seen, in other words, that the printer produces a blank sheet.

49. One can imagine the reaction of the proud proprietor of such a machine when a technician called upon to remedy the failure to print assures him that, notwithstanding that nothing has been printed, the machine is operating perfectly.

50. But the Commission is none the less right, since, as it points out, the reason why the machine fails to print is not that there is no cartridge in the position envisaged by the manufacturer but that the cartridge contains no ink. It must be noted that *the essential character, for the purposes of general rule 3(b)*, of the contested cartridges *is the ink* that they contain. The plastic casing is no more than the best method which could be devised to supply the printer with a liquid product indispensable to its operation and which cannot but be packaged.

51. I note also that the designer and the manufacturer of the printer in question could have made a different technical choice from that which they decided on. I guess it ought to be possible to manufacture printers supplied with an ink reservoir, which the user would have to replenish at regular intervals. In that case, the reservoir would undoubtedly be delivered with the printer and would clearly form a part of it and the ink would be supplied in packaging, the format of which would be immaterial, provided that filling the tank was easy. That is not the case for Epson Stylus Colour printers which must be supplied with ink in cartridges which are sold separately and which, once empty, have to be replaced.

52. Admittedly, the Finanzgericht points out, the cartridges may be refilled. It does not appear however that that is a conclusive factor. Refilling is a complex operation, which does not consist simply of decanting the ink from a bottle into the casing, as one would decant wine from a bottle into a carafe, and I very much doubt that the users of the printers in question are encouraged by the manufacturer to refill automatically, which can cause considerable difficulty if not done correctly. That is why when a cartridge is refilled this is usually done by a professional, who might just as easily be said to be facilitating the reuse or recycling of empty packaging as to be refilling. In other words, it is not because

it is possible to refill that ink cartridges may not be classified as consumable products with which the printer must, as also in the case of paper, be supplied to carry out the tasks which may be expected of it.

53. It is also clear from Turbon's observations that Epson Stylus Colour printers only have one position for ink cartridges and, consequently, if users wish to change from one print colour to another, they must change the cartridge for the essential element to reach the print head to obtain the desired result, namely ink of the chosen colour. One cannot make it clearer than that the cartridge provides the essential element and therefore it is characterised by the ink which it holds, and not the plastic casing in which it is stored.

54. It was explained that the cartridge is more complicated than one might think, since it is shaped to maintain precisely the flow of ink corresponding to the needs of the printer. Whilst I do not doubt this, it appears that there are plenty of forms of container designed specifically to produce a certain quantity where they supply the product they contain.

55. That is, it seems to me, true of simple bottles, the neck of which is most certainly proportioned in such a way that the flow of the drink enables a glass to be filled without overflowing. It is also true of jars of spices, which are designed differently according to whether they are intended to hold thyme or cayenne pepper, since a cook seasoning a dish does not intend the cayenne pepper to come out of the jar in the same quantity as the thyme. It is also true, and this is the last example, of boxes of artificial sweeteners designed to release, by simply pressing a button, one unit at a time. Therefore there are no grounds for considering that the contested cartridges or, more specifically, the casing containing the printing ink, may not, in any case, be classified as packaging on the basis of the way in which they are constructed.

56. Nor is it clear that the casing constitutes packaging within the meaning of general rule 5(b). As noted by the Finanzgericht, they are not the kind normally used to hold printing ink, if only because they actually hold little ink. It might still be objected that, in relation to the retail sale of printing ink to users of printers, the packaging of ink in cartridge form, able to be fitted directly in the position provided to that end by the manufacturer of the machine, constitutes a standard mode of marketing, the sale of ink in more capacious containers being of interest only to users, probably a minority, who know how to refill cartridges.

57. Furthermore, in relation to the value ratio between the ink and the casing, I note that there are certainly many other products which, because they are packaged in a format corresponding to the preferences of consumers, who wish to be able to consume them immediately, without any handling and without having to transport a cumbersome and heavy container, are sold in small quantities, with the result that the value of the product contained in the packaging may be lower than the value of the packaging, but still without the customs classification no longer being that applicable to the contents.

58. I prefer, to justify the classification of the contested cartridges under heading 3215, to rely on general rule 3(b), the meaning of which need not be forced, to conclude that what is essential to the purpose of a cartridge, that is operating as part of the printing process, is the ink which it contains. Classification under heading 3215 does not pose, in my interpretation, any problem. This is printing ink, a liquid product held in a container corresponding to consumer expectations, which does not include any mechanical or electrical element occurring in the printing process the presence of which could cause the content to lose its essential character in the classification of the goods.

59. Classifying the contested cartridges under that heading is not contradictory given the classification, under another heading, either in the case of toners for photocopiers, which include a mechanical element, or printer cartridges including a print head, an essential element in the operation of a printer, or of ball point pens linked to their reservoir, which perform the function of writing, since they are designed for printing on paper with ink held in the reservoir. It is wholly compatible with, under the same heading, ink cartridges for fountain pens which are to those pens what the contested cartridge is to the printer, since their purpose is both to hold the ink and to release, regularly, a flow of ink necessary for the use of an instrument designed to print on paper and have a format, which varies according to the brand, allowing them to be inside the pen for which they are designed, as the Commission rightly observed.

60. I can only endorse the Commission's reservation concerning the consequences which must derive from the classification of the cartridges, if it were found that the metal screen constituted a mechanical or electronic element indispensable to the printing process. That finding would destroy the reasoning followed above for excluding the classification as a printer part and entail classification under heading 8473, as claimed by Turbon.

Conclusion

61. Taking account of my conclusions after consideration of the question from the national court in the light of the arguments put forward, I propose that the Court should reply to the Finanzgericht's question as follows:

Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Regulation (EC) No 866/97, must be interpreted as meaning that an ink cartridge consisting of a plastic casing, cellular material, metal screen, seals, tape seal and labels, ink and packing materials without an integrated print head which may be used solely in an Epson Stylus Colour printer classified under heading 8471 of the combined nomenclature, must, generally, be classified under heading 3215 of the combined nomenclature. It may conceivably be classified differently only if the metal screen contained in the ink cartridge fulfils a specific mechanical or electronic function in the printer: in that case, the ink cartridge should be classified as a part or accessory of a printer under heading 8473 of the combined nomenclature.