

ETNO Reflection Document on the Customs classification of Mobile Phones



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Executive summary

Mobile phones are covered by the Information Technology Agreement (ITA), but other Information and Communication Technology (ICT) products such as Global Positioning System (GPS) receivers are not. The Nomenclature Committee (NC) of the European Union is evaluating whether sophisticated mobile phones should be reclassified and made subject to customs duties in line with products such as GPS-units, TVs and video cameras. If the EU reaches the conclusion that for some types of sophisticated and technically advanced mobile phones the principal function is no longer that of being a mobile phone, this could put a significant and rapidly increasing number of mobile phones at risk of falling out of ITA coverage, thereby taxing mobile phones for the first time.

Mobile phones have many secondary features, but ETNO wishes to underline that the principal function of the above-mentioned devices is clearly the mobile phone functionality, that has enhanced development of our members sophisticated communication services and accelerated utilization of network capacity.

ETNO's position is that sophisticated and technically advanced mobile phones are characterised as transmission apparatus in cellular or wireless networks rather than an Automatic Data Processing (ADP) machine or camera or GPS receiver or TV-receiver, and therefore properly classifiable in 8517 12 00 by application of GIR 1 and Section XVI, Note 3, to the Combined Nomenclature.

On a more general note ETNO would like to stress that in a world of increasing convergence the problem of how to classify for the purpose of custom duties multipurpose ICT devices does not only relate to mobile phones, but to an ever growing broad variety of products offered by ETNO Members to their customers.

Independently of the question of whether such duties are justified or not, ETNO believes that the focus for the classification should be on the "essential character" of the device in question.

1. Purpose of this paper

The purpose of this paper is for ETNO, the leading trade association of major European Telecoms Network Operators, to provide the European Commission (EC) and the EU Member States (MS) with its position on tariff classification of sophisticated and technically advanced mobile phones.

2. Introduction

Cellular or mobile phones are wireless communication devices that simultaneously send and receive voice transmissions via radio waves. They are capable of converting user's voice into radio waves and radio waves back into voice. The radio waves from a cellular or mobile phone travel to a cellular base station. Subsequently, they are forwarded to the base station situated closest to the destination cellular or mobile phone.

Cellular or mobile phones working as described above have traditionally also included additional features such as clocks, calculators, address books, PDAs, caller ID, games, MP3 players, cameras, FM-radios, mobile-TVs or GPS locators. They are in many cases also able to send or receive data, video, images, audio signals, i.e. supporting communication to the internet, thereby enabling web browsing, e-mail or "information management use" via the cellular phone network.

Some of the EU MS have recently questioned the principal function of sophisticated and technically advanced mobile phones, which has resulted in discrepancies in tariff classifications in the EU. For example, some of the EU MS have shifted the tariff classification of sophisticated mobile phones with GPS functionality from mobile phones (HS 8517.12) to GPS receivers (HS 8526).

The classification of these devices, which we view as a "re-classification" of already existing products, into a heading attracting a duty rate may also be seen by other WTO members, which have not taken such steps (e.g. USA, India), as a trade restriction. Moreover, there is a significant risk that the classification approach chosen in the EU is also taken into use in other countries, therefore significantly harming global uptake and European industry.

3. Principal function

3.1. Principal function and technical specifications

ETNO believes that in order to make a correct and accurate determination on classification, this cannot be accomplished by the

use of Technical Specifications in isolation and that other determinant factors such as principal function, sales channels and requirement for sophisticated mobile phones to be registered on a cellular network should also be considered.

The following arguments establish that the communication function in cellular networks is the principal functionality of technologically advanced and sophisticated mobile phones.

3.2. Technical view

- Mobile phones have a full range of telephony features
 - designed to be held against a head in a talk position
 - easily portable, carried by owner as a personal communication device
- Whereas e.g. car navigation devices are designed to be installed on the dashboard or window of a car and are not carried by their owner as a personal item
- Other functions in mobile phones are not designed to perform to full specifications. When compared with dedicated devices, a multifunctional mobile phone creates constraints for other functionalities. The little additional hardware incorporated in the mobile phone has to be compromised not to interfere with the primary function: making phone calls
- Mobile phones have to be activated on a cellular phone network to function as a cellular phone
- A mobile phone is characterized by the presence of the SIM card (Subscriber Identity Module). The SIM card element indicates that the device is primarily designed as a telecommunication apparatus.
- High-end mobile phones are often equipped with GPS type facilities, in particular its Assisted GPS (A-GPS) variant which uses additional location servers on the mobile network. The latter adds substantial speed and precision to caller location. Precise, location-aware mobile phones not only allow useful commercial applications, but in case of an emergency call, location technology will save precious time and resources – and thus lives. A-GPS will assist the mobile network in determining the intervention centre responsible for the caller's real location and help emergency services in deciding e.g. where to send an ambulance starting from which dispatching station. In the US FCC rules require that all new mobile phones provide their latitude and longitude to emergency operators in the event of a 9-1-1 call. Carriers may choose whether to implement this via GPS chips in each phone, or by means of triangulation between cell towers. In Europe, the telecom operator must transmit the location information to the emergency centre. The EU Directive E112 (2003) requires that

mobile phone networks provide emergency services with whatever information they have about the location when the mobile call was made. However, in its review of these obligations the EU is following the US and wishes to make mobile caller location more accurate, favouring among others GPS based solutions.

3.3. Customer's view

- Customers perceive sophisticated mobile phones primarily as “mobile phones with other functionalities”, and not for example “MP3 players with phone functionalities”.
- Customers perceive mobile calling and SMS functionalities of mobile phones as its most important functionalities.
- Mobile phones use a SIM card, which require a contract with a mobile phone operator.
- When secondary functionalities of the cell phone are used, an incoming phone call pauses the secondary functionality and the incoming telephone call becomes the device's first priority.

3.4. Business view

- The mobile phone industry is selling sophisticated mobile phones predominantly to distributors and providers, e.g. phone operators and retailers.
- Their business is to provide services to end-customers enabling them to make phone calls via mobile phones. Development of technically advanced mobile phones has enhanced development of mobile operators sophisticated communication services and accelerated utilization of network capacity
- When acquiring rather expensive UMTS licenses all over Europe, the mobile net operators expected, amongst other things, to offer local business services (LPS) based on GPS technology, for instance searching nearby restaurants or hotels. Duty on mobile phones including GPS functionality would further delay the implementation of LBS.
- Historically the operators and retailers get up to 85% of their revenue from phone calls and the remaining mainly from SMS and data communication.

4. Classification practice of mobile phones

Over the past few months, ETNO members have become aware of a shift by certain MS in the classification of sophisticated mobile phones with GPS from tariff heading 8517 (phone) to 8526 (GPS). German

Customs has revoked a number of BTIs¹ classifying phones with GPS under tariff heading 8517. Dutch Customs has issued a BTI for a phone with a GPS under tariff heading 8526², whereas Polish Customs has issued BTIs for similar products under tariff heading 8517³.

This is in conflict with the established practice of classification of these items in the EU and in its major trade partners. Moreover, the EC and EU MS are currently investigating the classification of multifunctional handheld devices throughout the EU.

ETNO reiterates that the established global practice of classifying sophisticated mobile phones is to classify them according to their principal function as mobile phones in HS8517.12.

During the past ten years, many new secondary features such as camera, FM-radio, MP3 player, mobile-TV (e.g. via a two-way cellular network or through a one-way dedicated broadcast network such as DVB-H) and GPS-receiver have been introduced into sophisticated mobile phones. This has not changed the principal function of the mobile phone. This has been confirmed by various Binding Tariff Information (BTIs) in the EU and has also been accepted as a global approach for classification of mobile phones.

ETNO believes that the established classification principle based on the **principal function** is valid for sophisticated mobile phones and therefore should not be changed.

5. Impact

Mobile network operators contribute significantly to the European economy as employers and taxpayers. Mobile services also contribute significant productivity gains in Europe, a matter of no small significance in a period of turbulence for the European economy. The evolution of ETNO members' networks, and the services provided over those networks, goes hand in hand with developments in hardware: they are dependent on each other.

The imposition of duties on mobile phones risks dampening demand not only for sophisticated mobile phones, but for the services provided over next generation wireless networks. In turn, this makes the investment case for network upgrades questionable.

ETNO members are also concerned at the direct cost impact of higher prices for mobile phones. Many members subsidise the cost of handsets and higher prices will increase the subsidy while simultaneously decreasing the use of next generation services that deliver revenue.

¹ DE M/3423/07-1, DE M/3425/07-1 and DE M/3430/07-1

² NLRTD-2007-002824

³ PLPL-WIT-2007-00077, PLPL-WIT-2007-00635

6. Conclusion

Sophisticated and technically advanced mobile phones must be characterised as transmission apparatus in cellular or wireless networks rather than as an Automatic Data Processing (ADP) machine, camera, GPS receiver, or TV-receiver, and therefore properly classifiable in 8517 1200 by application of GIR 1 and Section XVI, Note 3, to the Combined Nomenclature.