



[\[Home\]](#) [\[Databases\]](#) [\[WorldLII\]](#) [\[Search\]](#) [\[Feedback\]](#)

Administrative Appeals Tribunal of Australia

You are here: [AustLII](#) >> [Databases](#) >> [Administrative Appeals Tribunal of Australia](#) >> [1988](#) >> [\[1988\] AATA 230](#)

[\[Database Search\]](#) [\[Name Search\]](#) [\[Recent Decisions\]](#) [\[Noteup\]](#) [\[LawCite\]](#) [\[Context\]](#) [\[No Context\]](#)
[\[Help\]](#)

Re Datacraft (Aust) Pty Ltd Trading As Datacraft
Direct Marketing and Collector of Customs [1988] AATA 230
(22 July 1988)

ADMINISTRATIVE APPEALS TRIBUNAL

Re: DATA-CRAFT (AUST.) PTY. LTD. TRADING AS DATA-CRAFT DIRECT

MARKETING

And: COLLECTOR OF CUSTOMS

No. V87/327

AAT No. 4506

Customs Tariff Classification

COURT

ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION
I.R. Thompsom (Deputy President)

CATCHWORDS

Customs Tariff Classification - importation of "ABC Switches" used with automatic data processing machine - whether a switch - whether an accessory for automatic data processing machine - whether description "switch" more specific than "accessory to automatic data processing machine" - application of interpretive rule 3(1)(a) Schedule 2 [Customs Tariff Act 1982](#)

Customs Tariff Classification - interpretive [rule 3\(1\)\(a\)](#) Schedule 2 Customs Tariff Act 1982 - whether function of goods more specific description than context in which used

Words and Phrases: "switch"

"accessory"

[Customs Tariff Act 1982](#) Schedule 2, [rule 3\(1\)\(a\)](#); Schedule 3, item 85.53,

84.55.9, 85.19; Note 3 of Chapter 84

Re Gissing and Collector of Customs ([1977](#)) [1 ALD 144](#)

Deputy Commissioner of Taxation v Polaroid Australia Pty. Ltd. (1971) 46 ALJR 32

Re National Panasonic (Australia) Pty. Ltd. and Collector of Customs (NSW) ([1985](#)) [7 ALD 647](#)

Walterscheid Australia Pty. Ltd. v Collector of Customs (No. NSW G351 of 1987 decided on 5 February 1988)

Re Gefo Australia Pty. Ltd. and Collector of Customs (Decision No. 3334: 27 March 1987)

HEARING

CANBERRA

22:7:1988



ORDER



The sub-item in Schedule 3 to the [Customs Tariff Act 1982](#) which applied to the subject goods at the time of their importation into Australia was sub-item 84.55.9; and



That the amount of duty paid in excess of the amount which was properly payable is to be refunded

to the applicant.

DECISION

This application was made in the name of  **Datacraft** 

Direct Marketing. The Tribunal has been informed that that is the trading name of  **Datacraft**  (Aust.) Pty. Ltd., which is in fact the applicant in these proceedings. In May 1987 it imported into Australia the goods which are the subject of this review. The respondent decided that item 85.19 in Schedule 3 to the [Customs Tariff Act 1982](#) ("the [Tariff Act](#)") applied to them and demanded that duty be paid accordingly. The applicant believed that item 84.55 applied to them; so it paid under protest the duty demanded. Then, pursuant to [section 273GA\(2\)](#) of the [Customs Act 1901](#), it sought review by the Tribunal of the respondent's decision.

2. At the hearing of the application the applicant was represented by Mr G. B. Wicks, of Counsel; the respondent was represented by Mr G. Hegarty, a departmental officer. Oral evidence was given by Mr R. J. Crothers, a data communications consultant and formerly an employee of the applicant, by Mr D. G. Anderson, Managing Director of Black Box Catalog Australia Pty. Ltd. which is jointly owned by  **Datacraft**  Investments Pty. Ltd. and Black Box Corporation of the USA, and by Mr T. R. Nisbet, a Senior Technical Officer employed by the Australian Telecommunications Commission as Manager of the Technical Division of its regulatory administration. The subject goods, although all having the same function, were of four different types. Samples of two of those types were tendered in evidence, as was a catalogue of products made in the USA by the Black Box Corporation and marketed in Australia by Black Box Australia Pty. Ltd. Another of the Black Box Corporation's products was tendered in evidence, together with a computer print-out of the entry of it for home consumption in May 1988.

3. Item 84.55 relates to the following goods:-

"84.55 *PARTS AND ACCESSORIES (OTHER THAN COVERS, CARRYING CASES AND THE LIKE) OF A KIND USED SOLELY OR PRINCIPALLY WITH MACHINES OF A KIND FALLING WITHIN 84.51, 84.52, 84.53 OR 84.54:"

4. Item 84.53 relates to the following goods:-

"84.53 * 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 FALLING WITHIN ANY OTHER ITEM"

5. Note 3 of the Chapter Notes to Chapter 84 defines the meaning of "automatic data processing machine" in item 84.53 as follows:-

"3. (1) In 84.53, 'automatic data processing machine' means -

(a) a digital machine that -

(i) has storage capable of storing not only the processing program or programs and the data to be processed but also a program for translating the formal programming language in which the programs are written into machine language;

(ii) has a main storage that is directly accessible for the execution of a program and has a capacity sufficient at least to store the parts of the processing and translating programs, and the data, that are immediately necessary for the current processing run; and

(iii) is able, of itself, on the basis of the instructions contained in the initial program, to modify, by logical decision, its execution during the processing run;

(b) an analogue machine that is capable of simulating mathematical models and comprises, at least, analogue elements, control elements and programming elements;
or

(c) a hybrid machine that consists of -

(i) a digital machine with analogue elements; or

(ii) an analogue machine with digital elements."

6. Item 85.19 relates to the following goods:-

"85.19 * ELECTRICAL APPARATUS FOR MAKING AND BREAKING ELECTRICAL CIRCUITS, FOR THE PROTECTION OF ELECTRICAL CIRCUITS, OR FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS (INCLUDING SWITCHES, RELAYS, FUSES, LIGHTNING ARRESTERS, SURGE SUPPRESSORS, PLUGS, LAMP-HOLDERS AND JUNCTION BOXES); RESISTORS, FIXED OR VARIABLE (INCLUDING POTENTIOMETERS), OTHER THAN HEATING RESISTORS; PRINTED CIRCUITS; SWITCHBOARDS (OTHER THAN TELEPHONE SWITCHBOARDS) AND CONTROL PANELS:"

Note 4(1) and (2) of the Chapter Notes to Chapter 85 states what is to be taken to be referred to where there is a reference in item 85.19 to printed circuits.

7. It is not in dispute that the computers with which the subject goods are designed to be used meet the definition of "automatic data processing machines" in Note 3 of the Chapter Notes to Chapter 84; nor is there any dispute that the printed circuits inside each of the subject goods are to be taken to be printed circuits as referred to in Note 4 of the Chapter Notes to Chapter 85.

8. The steps to be taken in classifying goods for customs tariff purposes are well established (see *Re Gissing and Collector of Customs* ([1977](#)) [1 ALD 144](#)). The first is to identify them. When they have been identified, Schedule 3 of the [Tariff Act](#) must be examined to see whether, having that identity, they are within one or more of the items in it. The rules for the interpretation of Schedule 3 are set out in Schedule 2. If goods are within more than one item, the process by which they are to be classified for the purpose of levying customs duty is to be carried out in accordance with those rules.

9. Each of the subject goods comprises a closed black metal box. On the outside of it on one side is a knob which can be moved between two set positions. On the outside on the other side are connectors designed so that leads through which electric current may pass may be plugged into them so as to connect the box with two computers and one printer or with one computer and two printers. On the inside of the box are printed circuits and an arm attached to the knob. When the knob is in one of its two set positions, the arm makes a contact between two of the printed circuits so that electric current

may flow between one connector and one of the other two connectors. When the knob is in the other set position, that circuit is broken and another made by joining the first of those printed circuits with another printed circuit so that current may flow between the first connector and the second of the two other connectors. The printed circuits are designed to carry electric current of very low power, about one thousandth of an amp.

10. The differences between the four types of subject goods is in the shape of the connectors and the detail of the printed circuits in them. They are designed to receive plugs having different shapes and attributes. All are designed for use with automatic data processing machines. However, the connectors in one type of the subject goods are the same as those used in the USA for telephone equipment. Mr Nisbet gave evidence that they could be used in conjunction with some telephone exchange equipment used by the Australian Telecommunications Commission. The connectors on the other three boxes, he said, were such that they could not be so used.

11. The purpose of each of the subject goods is to enable one machine to be permanently connected with two other machines and to be used in conjunction with either one or the other of them at any one time. It obviates the need for leads running directly from the first machine to one of the others to be unplugged and plugged into the other one on each occasion when a change in the combination of the machines has to be made. Once leads from all three pieces of equipment have been plugged into the connectors on the outside of the box, the first piece can be used with either of the other two by simply setting the knob so that it makes the circuit which enables electric current to flow between them through the leads and the appropriate printed circuits inside the box.

12. Among the documents lodged with the Tribunal pursuant to section 37 of the [Administrative Appeals Tribunal Act 1975](#) is a copy of the invoice issued by the Black Box Corporation to the applicant in respect of the subject goods. Each of them is referred to as a switch. In the "Black Box Catalog" published by Black Box Australia Pty. Ltd. the page in which they are described is headed "Basic Data Switches". Each of the subject goods is referred to on that page as an "ABC Switch". However, Mr Wicks submitted that they were not in fact switches and should instead be called "redirectors". He said that an object which was designed to make and break electric circuits in the supply of mains electricity in offices and dwelling houses was properly to be referred to as a switch and submitted that it was not an appropriate description of the subject goods. Although they were designed so that electric current might flow through the printed circuits within them and thereby between one machine and one or other of two other machines according to the position of the manually operated knob on the outside of the box, their function was to direct the flow of information from the one machine to the other. When the knob was moved from one of its settings to its other, it redirected the flow to the second of the other machines.

13. Mr Crothers, who gave evidence on behalf of the applicant, acknowledged that the form in which information was transmitted between the machines via the black box was electric current of various voltages; and that the effect of movement of the knob on the box was to make and break the electric circuits by which that electric current flowed between the machines. Mr Nisbet, who was called as a

witness by the respondent, gave evidence to like effect. I have no doubt that the function of each of the subject goods is that of a switch for making and breaking connections in electrical circuits. Each of its components is dedicated to enabling it to perform that function. I find, therefore, that it is to be identified as a switch.

14. However, that is not the full extent of its identity. It is not a switch having a general use for making and breaking connections in electrical circuits. It is designed specifically for use with machines that transmit and receive electric current of very low power; its capabilities are limited accordingly. I am satisfied that the sole or principal use of each of the subject goods is with automatic data processing machines. So I identify it as an electric switch for use with automatic data processing machines.

15. It is the applicant's case that it is to be further identified as an accessory for the automatic data processing machines with which it is used. Mr Hegarty submitted that, for any thing to be an accessory for any other thing, it must extend the operational capability of that thing. He referred the Tribunal to the judgment of Gibbs J. (as he was then) in *Deputy Commissioner of Taxation v Polaroid Australia Pty. Ltd.* (1971) 46 ALJR 32 and to several cases in which the Tribunal has considered what are the attributes of a thing which make it an accessory for another thing. In the Polaroid case an issue was whether a film pack for a Polaroid camera was a part or an accessory for a Polaroid camera or was neither. At page 35 His Honour said:-

"The ordinary dictionary meaning of accessory is an adjunct, which itself is defined as something joined to another, but subordinate, as auxiliary, or dependent upon it. It was because the Deputy Commissioner regarded the goods as essential to the use of a Polaroid camera that he preferred to submit that they are parts rather than accessories. In my opinion, however, the goods in question cannot be regarded as accessories for a Polaroid camera. An accessory for a camera is an extra and additional part of the equipment of the camera itself, such as a light meter, a filter or a wide angle lens, and in the ordinary course of language a film would not be referred to as an accessory for a conventional camera, nor a film pack or a picture roll as an accessory for a Polaroid camera."

16. In *Re National Panasonic (Australia) Pty. Ltd. and Collector of Customs (NSW)* (1985) 7 ALD 647 the Tribunal had to decide whether blank video tape cassettes were parts or accessories for video recorders. It considered a number of dictionary meanings of "accessory" and observed that "the very word 'accessory' carries a connotation of something that is 'added or attached for convenience'" and

that it did "not fit well with a notion of indispensability". For that reason it was to be contrasted with a part, which was something necessary to the completion of an article, a "constituent or component part". It drew an analogy between video cassettes for use with video recorders and film packs for use with Polaroid cameras and suggested also that "there would seem to be implicit in the meaning of both 'part' and 'accessory' that there is a recognized, predetermined and relatively fixed numerical relationship between the necessary number or numbers of part or accessory, on the one hand, and the equipment or other principal operating unit with which a particular part or accessory is intended to be used at any time, on the other".

17. Mr Hegarty submitted that for any thing to be an accessory for another thing it must be designed to be attached directly to it and must extend its operational capabilities. He gave as examples lenses and filters for a camera and a rear vision mirror for a motor car. Certainly the examples given in the Macquarie Dictionary and the Random House Dictionary of the English Language to illustrate the meaning of accessory are all things which in use are directly attached to the object to which they are accessory. However, in the Macquarie Dictionary the meaning is stated as "something added or attached". In the Shorter Oxford English Dictionary it is stated as "an accessory thing"; one meaning of the adjective "accessory" is stated to be "additional". In the Random House Dictionary of the English Language an accessory is stated to be "a subordinate or supplementary part, object, etc.". In the Macquarie Dictionary it is stated to be "a subordinate part or object". I can find nothing in those meanings to require that an accessory be physically attached directly to the thing for which it is an accessory. The inclusion in the definition of "object" in addition to "part" appears to point towards things that may be separated from the things for which they are accessories. I see no reason why indirect attachment by a connecting lead should not be sufficient.

18. Nor am I able to accept as correct the submission that an accessory must extend the operational capabilities of the thing to which it is added. In the Random House Dictionary of the English Language one of the examples of an accessory is a lens cover for a camera. Such a cover protects the lens from damage; it does not extend the operational capabilities of the camera. In the Macquarie Dictionary one of the examples is a driving mirror for a motor car, an example which Mr Hegarty himself gave. Such a mirror does not extend the operational capabilities of the motor car; it merely enables the driver to operate it more safely. Support for the view that an accessory need not extend the operational capabilities of the thing for which it is an accessory may be derived from comments made by Davies J. in his statement of the reasons for his decision in *Walterscheid Australia Pty. Ltd. v Collector of Customs* (No. NSW G351 of 1987 decided on 5 February 1988). Having decided that an accessory did not have to relate to the essential function of the thing for which it was an accessory, he expressly approved the decision of the Tribunal in *Re Gefo Australia Pty. Ltd. and Collector of Customs* (Decision No. 3334: 27 March 1987) that floor mats made for use in motor vehicles were accessories for motor vehicles.

19. In order for information processed by an automatic data processing machine in the form of machine language to be available in a form readily intelligible to human beings, the machine must be connected with another machine which converts the machine language into printed words and figures (or possibly into speech). I have no doubt that a lead by which the machine is able to be joined to

such an other machine is an accessory for it. The printed circuits within the black box perform the same function as a lead. Although the black box additionally has the potential to perform a switching function, in all its functions it is subordinate to the automatic data processing machine or machines to which it is connected by leads. The machine can work without it; it cannot work without the machine. I find, therefore, that each of the subject goods is an accessory for an automatic data processing machine. Each of the subject goods is of a kind used solely or principally with automatic data processing machines.

20. Having identified the subject goods, I am satisfied that they fall within both item 84.55 and item 85.19. Which of those items applies to them has to be ascertained in accordance with the principles set out in [rule 3](#) of Schedule 2 to the [Tariff Act](#). The rules require that paragraph (a) of [rule 3\(1\)](#) must be considered first to see whether the applicable item can be ascertained in accordance with its provisions. It reads:-

"(a) If one of the items, sub-items, paragraphs or sub-paragraphs, as the case may be, provides a more specific description of the goods than any other of the items, sub-items, paragraphs or sub-paragraphs, that first-mentioned item, sub-item, paragraph or sub-paragraph, as the case may be, applies to the goods."

21. [Rule 3\(1\)\(a\)](#) requires examination of the terms of the items of Schedule 3 and the degree of specificity with which they describe the subject goods as identified. Each of the subject goods in this case performs a switching function by making and breaking electrical circuits. It performs its function in respect of electric current transmitted between an automatic data processing machine and a printer. To describe it as electrical apparatus for making and breaking electrical circuits is to state its function in very broad terms. To describe it additionally as a switch is to state its function in more specific, but still fairly general, terms; the context in which it performs that function is not stated. To describe it as an accessory of a kind used solely or principally with machines of a kind falling within item 84.53 is to state the context in which it is used; its function is not stated.

22. The task of deciding whether or not either description is a more specific description of the subject goods than the other is made difficult by the fact that one description is in terms of function and the other in terms of context. However, I am satisfied that the degree of specificity of the description by item 84.55 is greater than that of the description by item 85.19.

23. I find, therefore, that that is the item which applies to all the subject goods. At the time when they were imported the only sub-items of the item were:-

"84.55.1 - For stapling machines 15% DC:10%
84.55.9 - Other 2% DC:Free"

Clearly it was sub-item 84.55.9 which applied to the subject goods.

AustLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.austlii.edu.au/au/cases/cth/AATA/1988/230.html>