



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
26th Session
-

NR0285E1
(+ Annexes I and II)

O. Fr.

Brussels, 12 July 2002.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE IN ORDER TO UPDATE
THE TERMINOLOGY OF CERTAIN PRODUCTS AND TO DELETE OBSOLETE ITEMS

(Item III.A.15 on Agenda)

Reference documents :

NR0149E1 (RSC/23)
NR0165E2, Annex D/1 (RSC/23 – Report)
NR0175E1 (RSC/24)
NR0205E2, Annex C/7 (RSC/24-Report)
NR0216E1 (RSC/25)
NR0216B1 (RSC/25)
NR0265E3, Annex C/6 (RSC/25-Report)
NC0550E1 (HSC/29)
NC0590E2, Annex H/14 (HSC/29-Report)

I. BACKGROUND

1. At its 25th Session, the Review Sub-Committee continued with its examination of proposals to modernise and simplify certain HS headings with a view to updating the terminology of certain products and deleting obsolete items.

Heading 85.20

2. Where the amendment of heading 85.20 was concerned, the Sub-Committee confirmed its previous decisions with regard to :
 - (1) the deletion of subheading 8520.10 for dictating machines not capable of operating without an external source of power;

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- (2) the acceptance of a new 4-digit heading text which entailed the deletion of the words "magnetic tape recorders and other";
- (3) the retention of subheading 8520.20 for telephone answering machines, given the high volume of world trade in these apparatus.

3. Where the other subheadings were concerned, the Sub-Committee instructed the Secretariat to prepare a new document setting out a new structured nomenclature for heading 85.20, which should achieve the dual objectives of deleting obsolete articles and covering the new technologies. The document would take account not only of the proposals made by the Secretariat and by ~~Canada~~, but also of comments made during the session by the Delegates of ~~Japan~~ and the ~~United States~~, to the effect that (i) following the rewording of the heading text, the order of the subheadings would need to be changed so as to distinguish between products with reference to the type of media used (magnetic, optical, memory cards ...), and (ii) 2-dash subheadings 8520.33 and 8520.39, covering non-digital magnetic tape recorders, should be merged.

4. The Delegate of the ~~EC~~ also suggested that pocket-size equipment using the new technologies, which was generating ever-increasing volumes of trade, should be included in the new structured nomenclature for this heading.

Heading 85.24

5. In the case of heading 85.24, a new structured nomenclature had been decided upon at the Sub-Committee's 24th Session, with the word "records" in the current English version of the 4-digit heading text being replaced by "discs", and subheading 8524.10, covering gramophone records, being deleted following the deletion of record players from the text of heading 85.19.

6. In order to improve the structured nomenclature of this heading through the deletion of a number of subheadings which had now become obsolete – particularly subheadings 8524.31 and 8524.91 - the Delegate of ~~Switzerland~~ requested that the proposed new wording be retained in square brackets for examination at the present session, on the basis of a new proposal to be submitted by his administration.

7. It was also suggested that in keeping with what had been said about heading 85.20, the new structured nomenclature for heading 85.24 should classify articles separately according to the reading mode employed (magnetic readers, optical readers and those with built-in memory). Another suggestion was that account be taken of amendments which had been approved by the Council and included in the Recommendation of 25 June 1999, but had not been incorporated in the 2002 version of the Harmonized System because of a reservation entered by a Contracting Party.

8. Finally, the Sub-Committee instructed the Secretariat to prepare a new document incorporating the ~~Swiss~~ proposal and any other proposals which might be put forward by Contracting Parties.

9. On 30 April 2002, the Secretariat received the following note from the ~~Swiss~~ Administration :

II. NOTE BY THE SWISS ADMINISTRATION

"At the 25th Session of the Review Sub-Committee the Swiss Administration indicated, through its delegate, that it would present a new proposal for the structured nomenclature to heading 85.24, to enter into force as part of the fourth review of the Harmonized System (January 2007).

The Swiss Administration considers, in fact, that the current structured nomenclature to heading 85.24 needs to be reworked so that new technology products currently available on the market, and that to be introduced in the near future, can easily be classified within the new structure.

Swiss proposal and comments

85.24 Existing text

- 8524.20 - Cards incorporating a magnetic stripe
 - Magnetic media of all types :
- 8524.71 -- Software for automatic data processing machines, other than game or leisure software
- 8524.72 -- Game and leisure software
- 8524.73 -- Other
 - Media based on an optical reading system :
- 8524.74 -- Software for automatic data processing machines, other than game or leisure software
- 8524.75 -- Game and leisure software
- 8524.76 -- Other
 - Other media based on optical or laser technologies :
- 8524.77 -- Software for automatic data processing machines, other than game or leisure software
- 8524.78 -- Game and leisure software
- 8524.79 -- Other
- 8524.90 - Other

Observations on the structured nomenclature proposed above

- (1) The Explanatory Notes accompanying the proposed structured nomenclature would need to provide the following information :

Subheadings 8524.71/73 cover wholly magnetic media only.
 Subheadings 8524.74/76 cover media, whether or not combined with magnetic systems (magnetic-optical type read/write discs), which cannot be mechanically recorded subsequently.

NR0285E1

- (2) In the Explanatory Notes, the term "software" should be defined as follows : "collection of instructions, data, sound and/or images, recorded on a medium in binary form and capable of being used interactively.

Interactivity means the possibility for the user to affect the execution of the programme by introducing specific parameters or commands. These interactive parameters or commands must be capable of being saved, stored, re-used and changed at any time; they affect the execution of the programme without changing the bases of the software. Using the software concerned, also known as "programme(s)", it is possible to create files and/or modify existing files."

- (3) The observations which follows are to be taken into consideration only if it is decided to create a subheading within heading 85.24 for certain data storage media (e.g., flash electronic storage cards, Memory Sticks, etc.); it is noted that the products in question are the subject of a separate document for the HSC.


The structured nomenclature presented above should be supplemented as follows :

85.24 Existing text, to which should be added : "**; integrated circuit modules (memories) for digital data storage**".

8524.80 - integrated circuit modules (memories), for digital data storage".

III. SECRETARIAT COMMENTS

Heading 85.20

10. As decided by the Sub-Committee, the Secretariat has reproduced at Annex I hereto all the possibilities for the amendment of heading 85.20, as they emerged from the discussions at the 25th Session.
11. At the time of preparation of this document, the Secretariat had not received any additional information from administrations. However, taking into account the various alternatives already put forward and the comments made during the meeting, the Secretariat has proposed, in Annex I, a new text for heading 85.20 which includes - in square brackets - a new subheading to give separate status to pocket-size equipment, as suggested by the .
12. The Secretariat suggests that the Sub-Committee create a Subheading Note to define the pocket-size equipment of proposed new subheading 8520.30, as was done for the goods of subheadings 8519.92 and 8527.12, although not necessarily specifying the same dimensions. This Note could read as follows :

"Subheading 8520.30 covers only sound recording apparatus with built-in amplifier, without built-in loudspeaker, capable of operating without an external source of electric power and the dimensions of which do not exceed 100 mm x 70 mm x 20 mm."

13. The Secretariat leaves it to the Sub-Committee to specify the appropriate dimensions, which could be different from those given for the pocket-size apparatus of headings 85.19 and 85.27. In this connection, the Sub-Committee is invited to consider the case of portable sound recording apparatus incorporating a CD player. These apparatus would not be covered by the new structured nomenclature, because they exceed the maximum dimensions proposed above.
14. The new structured nomenclature provides for the separate identification of apparatus using magnetic media, which are covered by new subheading 8520.4; this subheading is itself divided into two 2-dash subheadings, giving separate status to digital magnetic media, which are now the most common in trade, and merging existing subheadings 8520.33 and 8520.39 as suggested by the ~~United States~~.
15. New subheadings 8520.50 and 8520.60 cover, respectively, apparatus incorporating an optical reading system, and the transcription of data files onto a flash memory, in accordance with the decision taken by the HS Committee at its 29th Session on the classification of MP3 players, from which it emerged that the expression "sound recording" in heading 85.20 should be interpreted broadly, to include semi-conductor electronic data storage media. The residual subheading "Other" (subheading 8520.90) would then cover other apparatus employing sound recording processes not specified above.
16. Similarly, the Sub-Committee is invited to rule on the classification of apparatus combining an audio CD player with a built-in memory. The Secretariat wonders whether these apparatus should fall in new subheading 8520.50, or whether a new subheading should be introduced for them.

Heading 85.24

17. The proposal by ~~Switzerland~~ is beneficial in that it takes account of the Recommendation of 25 June 1999, which provided for the insertion of a Subheading Note giving a clear definition of the scope of the term "software" for the purposes of present subheadings 8524.31, 8524.40 and 8524.91. That Subheading Note excluded from the scope of the term "software", digital audio discs or other audio recordings of the type used with sound recording or reproducing apparatus of heading 85.19 or 85.20, and digital video discs or other video recordings of the type used with video recording or reproducing apparatus of heading 85.21 or with still image video cameras and other video camera recorders or digital cameras of heading 85.25.
18. In place of that legal Note, the ~~Swiss~~ Administration proposes that the Explanatory Notes be amended in order to define not only software but also interactivity, bearing in mind that software is intended to be used interactively. This definition indicates that software is a "collection of instructions, data, sound and/or images, recorded on a medium in binary form and capable of being used interactively". In this connection the Secretariat considers that the creation of a legal Note as provided for in the above-mentioned Recommendation would be more appropriate, given the legal status of such a Note and the clarity of its presentation, although, of course, this would not preclude the inclusion of more detailed explanations in the Explanatory Notes.
19. In the Secretariat's view, the layout of the ~~Swiss~~ proposal could also be amended, firstly to clarify the scope of each 1-dash subheading, and secondly to distinguish more clearly between the various categories of apparatus as indicated, namely (a) wholly magnetic media, (b) media which combine a magnetic system with other systems and cannot be

mechanically recorded subsequently, and (c) storage media using laser or optical rays, or based on optical or laser technology.

20. The Secretariat notes that this structured nomenclature does not distinguish clearly between the different media as recommended by the Sub-Committee; in particular, the Swiss Administration would need to supply details on the distinction to be made between media based on an optical reading system and other media based on optical or laser technologies.
21. Finally, in its proposal the Swiss Administration supplements the new structured nomenclature to this heading with an additional phrase to be added to the present heading text with a view to including integrated circuit modules for digital data storage, and the creation of a 1-dash subheading for these products.
22. Thus, for a proper understanding of the new wording of this heading, the Secretariat has included in Annex II hereto a restructured version which takes account of all the factors referred to above. All the alternatives put forward for this heading are reproduced in that Annex, and the Secretariat leaves it to the Sub-Committee to decide what amendments, if any, should be made to the structured nomenclature.
23. The Secretariat wishes to point out that the question of integrated circuit modules for data storage, which is on the Agenda for the present session as item III.B.5 (Doc. NR0229E1), will need to be resolved before any amendments can be made to the Nomenclature and the Explanatory Notes to specify their classification.

IV. CONCLUSIONS

24. The Sub-Committee is invited to examine the proposed amendments to headings 85.20 and 85.24 which are reproduced in Annexes I and II to this document, in the light of the comments made above by the Secretariat.

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Heading 85.20

SECRETARIAT PROPOSAL

["85.20 Sound recording apparatus, whether or not incorporating a sound reproducing device.

- 8520.20 - Telephone answering machines
- [8520.40 - Other, with a laser reading system
- Other sound recording and reproducing apparatus :
- 8520.51 -- Digital
- 8520.52 -- Other, cassette type
- 8520.59 -- Other
- 8520.90 - Other"]]

~~CANADIAN~~ PROPOSAL

["85.20 Sound recording apparatus, whether or not incorporating a sound reproducing device.

- 8520.20 - Telephone answering machines
- [- Other sound recording apparatus, incorporating a sound reproducing device :
- 8520.51 -- Non-digital audio tape type
- 8520.52 -- Digital audio tape type
- 8520.53 -- With a laser reading system
- 8520.54 -- With a built-in or removable memory
- 8520.59 -- Other
- Other :
- 8520.91 -- With a laser reading system type
- 8520.92 -- With a built-in or removable memory
- 8520.99 -- Other"]]

RESTRUCTURED SECRETARIAT PROPOSAL

["85.20 Sound recording apparatus, whether or not incorporating a sound reproducing device.

8520.20 - Telephone answering machines

[8520.30 - Pocket-size apparatus]

[- Other sound recording apparatus, whether or not incorporating a sound reproducing device, for recording sound onto magnetic media :

8520.41 -- Digital

8520.49 -- Other

8520.50 - Other sound recording apparatus, whether or not incorporating a sound reproducing device, with a laser reading system

8520.60 - Other, with built-in memory

8520.90 - Other"]]

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Heading 85.24

**STRUCTURED NOMENCLATURE DECIDED UPON BY THE REVIEW
SUB-COMMITTEE AT ITS 24TH SESSION**

["85.24

Discs, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of discs, but excluding products of Chapter 37.

- Discs for laser reading systems :

8524.31 -- For reproducing phenomena other than sound or image

8524.32 -- For reproducing sound only

8524.39 -- Other

8524.40 - Magnetic tapes for reproducing phenomena other than sound or image

- Other magnetic tapes :

8524.51 -- Of a width not exceeding 4 mm

8524.52 -- Of a width exceeding 4 mm but not exceeding 6.5 mm

8524.53 -- Of a width exceeding 6.5 mm

8524.60 - Cards incorporating a magnetic stripe

- Other :

8524.91 -- For reproducing phenomena other than sound or image

8524.99 -- Other"]

 PROPOSAL

- [**85.24** **Discs, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of discs, but excluding products of Chapter 37; integrated circuit modules (memories) for digital data storage.**
- 8524.20 - Cards incorporating a magnetic stripe
 - Magnetic media of all types :
 - 8524.71 -- Software for automatic data processing machines, other than game or leisure software
 - 8524.72 -- Game and leisure software
 - 8524.73 -- Other
 - Media based on an optical reading system :
 - 8524.74 -- Software for automatic data processing machines, other than game or leisure software
 - 8524.75 -- Game and leisure software
 - 8524.76 -- Other
 - Other media based on optical or laser technologies :
 - 8524.77 -- Software for automatic data processing machines, other than game or leisure software
 - 8524.78 -- Game and leisure software
 - 8524.79 -- Other
 - 8524.80 - Integrated circuit modules (memories) for digital data storage
 - 8524.90 - Other"]

~~SWISS~~ PROPOSAL RESTRUCTURED BY THE SECRETARIAT

- [**85.24** **Discs, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of discs, but excluding products of Chapter 37; integrated circuit modules (memories) for digital data storage.**
- 8524.20 - Cards incorporating a magnetic stripe
 - 8524.30 - Integrated circuit modules (memories) for digital data storage
 - Magnetic media of all types :
 - 8524.41 -- Software for automatic data processing machines, other than game or leisure software
 - 8524.42 -- Game or leisure software
 - 8524.49 -- Other
 - Media based on an optical reading system :
 - 8524.61 -- Software for automatic data processing machines, other than game or leisure software
 - 8524.62 -- Game or leisure software
 - 8524.69 -- Other
 - Other media based on optical or laser technologies :
 - 8524.71 -- Software for automatic data processing machines, other than game or leisure software
 - 8524.72 -- Game or leisure software
 - 8524.79 -- Other
 - 8524.90 - Other"].
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