



HARMONIZED SYSTEM
COMMITTEE

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CLASSIFICATION OF A LAMINATED PRODUCT, CALLED "POLYSWITCH",
CONSISTING OF OUTER LAYERS OF NICKEL AND AN INNER LAYER OF PLASTICS

(Item VIII.28 on Agenda)

I. BACKGROUND

1. On 16 December 1998, the Secretariat received a Note from the Administration of Japan regarding the classification of a laminated product called "PolySwitch", to the effect that this article was a sheet classifiable, in accordance with General Interpretative Rule 3 (b), in either Chapter 39 or Chapter 75. However, the exporter pointed out that this was a "blank" for an article for protecting electric circuits, apparently classifiable in heading 85.35 by application of GIR 2 (a). Given this dispute, the Japanese Administration wished to submit this question to the Harmonized System Committee.

II. NOTE FROM THE JAPANESE ADMINISTRATION

Description of the product

(a) Content :

The product is in sheet form and consists of the following materials : The inner layer consists of a mixture of electric nonconductive polymers (polyolefin, fluoroplastics, etc.) and conductive carbon black. The two outer layers consist of nickel foil.

(b) Size :

The size of the sheet is 12 by 16 inches (30 by 40 cm).

(c) Thickness :

Inner layer : 0.3 mm
Individual outer layer : 0.025 mm

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(d) Manufacturing process :

- ① Electric nonconductive polymers and conductive carbon black are mixed.
- ② The mixture is extruded in sheet form.
- ③ Nickel foil is laminated by heat sealing onto the mixture.
- ④ The sheet is cut to the shape indicated in (b) above.

* After import, the sheet is cut into various shapes or sizes as required by customers so that a finished "PolySwitch" product is formed. Wires or leads may also be attached to the "PolySwitch" sheet.

(e) Function :

The various "PolySwitches" act as resettable fuses in response to overcurrent or high-temperature conditions in electrical circuits. They are used for protection of batteries, telephones and motors, etc. Their working voltage does not exceed 60V.

Considerations

(a) The "PolySwitch" sheet is a three-layer product. Japan considers that GIR 1 is not applicable to the sheet because there is no relevant legal provision. The following options would therefore be possible :

- ① It is classifiable in subheading 8535.30 by application of GIR 2 (a) (unfinished article)
- ② By application of GIR 3 (b), it is classifiable as a polymer sheet including carbon black (subheading 3921.90) or nickel foil (subheading 7506.10 or 7508.90).

(b) The provisions of GIR 2 (a) apply to articles having the approximate shape or outline of the finished article or part (Explanatory Note, GIR 2 (a) (II)), and the exporter claims that this Rule is applicable.

(c) However, the product in question is simply a sheet that does not have any shape or outline of the finished article. Japan is of the view that it is a semi-manufactured product and that GIR 2 (a) is not applicable. In this connection, the attention of the Committee is drawn to the discussion at the 14th Session of the HSC. The Committee considered the classification of a product called "Tetra Brik" (the finished products are used as packaging for beverages) consisting of paper covered with polyethylene and/or aluminium presented in rolls. It was argued that "Tetra Brik" should be classified as unfinished or incomplete containers of heading 48.19, by application of GIR 2 (a). But the Committee decided that, by application of GIR 1 and GIR 3 (b), the products should be classified in heading 48.11 (16 votes) rather than in heading 48.19 by application of GIR 2 (a) (3 votes) (Doc. 38.960).

(d) Consequently, by analogy with the above case it seems that GIR 2 (a) is not applicable to "PolySwitch" sheets and that these are classifiable as a polymer sheet including carbon black or nickel foil, by application of GIR 3 (b).

III. SECRETARIAT COMMENTS

2. The article at issue consists of two rectangular nickel sheets "sandwiching" a sheet consisting of a mixture of electric nonconductive polymers and conductive carbon black. Since it is a flat-surfaced laminated product, in a rectangular form, whose outer layers consist of nickel, the Secretariat feels that it is a semi-manufacture or a semi-finished product classifiable in Chapter 75.
3. The Explanatory Note to Chapter 75 specifies : "Products and articles of nickel may be subjected to various treatments to improve the properties or appearance of the metal, etc. These treatments are generally those referred to at the end of the General Explanatory Note to Chapter 72." (General Explanatory Note, penultimate paragraph, page 1147). According to the Explanatory Note to Chapter 72, lamination is an operation permitted for the products of this Chapter (General Explanatory Note, Part IV (C), Item (2) (g), page 1071). In this respect, it should be recalled that at the Committee's 20th Session in November 1997, it decided to classify laminated aluminium products in heading 76.06 as aluminium plates and sheets but did not indicate the legal basis for this (see Compendium of Classification Opinions, page 29, Opinions 7606.11 to 7606.92 1). "PolySwitch" sheets therefore appear to be classifiable in heading 75.06 as nickel plates and sheets; however, it is open to question whether this classification should be based on Note 1 (d) to Chapter 76 (GIR 1) or on General Interpretative Rule 3 (b).
4. Regarding the "Tetra Brik" and "Tetra Brik Aseptic" products, classified in heading 48.11 (see the Japanese Administration's note), the Committee should take note of the Explanatory Note to heading 48.11, which specifies that this heading also covers "paper and paperboard for the manufacture of packagings for beverages and other foodstuffs, printed with texts and illustrations referring to the goods to be packaged therein, covered on both faces with thin transparent sheets of plastics, with or without a lining of metal foil (on the face of which will form the inside of the packaging)".
5. With regard to possible classification in subheading 3921.90, the Secretariat draws attention to the Explanatory Note to Chapter 39 specifying that this Chapter covers plates, sheets, etc., of plastics, separated by a layer of another material such as metal foil, paper, paperboard, except however the products of heading 48.11 (General Explanatory Notes : **"Combinations of plastics and materials other than textiles"**, Item (b), page 598). In the "PolySwitch" sheet, it is the plastic which is inserted and therefore the Secretariat would rule out classification of this product in subheading 3921.90.
6. As for the possible application of General Interpretative Rule 2 (a), it is worth recalling the information provided in Japan's note : "After import, the sheet is cut into various shapes or sizes as required by customers so that a finished "PolySwitch" product is formed. Wires or leads may also be attached to "PolySwitch" sheet. The various "PolySwitches" act as resettable fuses in response to overcurrent or high-temperature conditions in electrical circuits". The Explanatory Note to Rule 2 (a) specifies that "the term **"blank"** means an article not ready for direct use, having the approximate shape or outline of the finished article or part ...Semi-manufactures not yet having the essential shape of the finished articles... are

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not considered as blanks." (page 2, Item II, second paragraph). As the "PolySwitch" sheet is a flat-surfaced rectangular product, the Secretariat does not feel that GIR 2 (a) is applicable.

7. Heading 85.35 cannot be considered for classification of "PolySwitch" sheet products since their working voltage does not exceed 1000 volts.

IV. CONCLUSION

8. The Committee is invited to rule on the classification of a "PolySwitch" sheet, taking account of the Japanese Administration's Note and the Secretariat's comments in paragraphs 2 to 7 above, and to decide on the action to be taken in respect of this matter.
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