



HARMONIZED SYSTEM
COMMITTEE

-
32nd Session
-

NC0785E1
(+Annex)

O. Eng.

Brussels, 15 October 2003.

POSSIBLE NEW NOTE 6 TO CHAPTER 85 (PROPOSAL BY THE US ADMINISTRATION)

(Item VIII.1 on Agenda)

I. BACKGROUND

1. At the 28th Session of the Review Sub-Committee in September 2003, during the examination of the Comprehensive Review of the Explanatory Notes to Chapter 85, the US Delegate informed the Sub-Committee that his administration could not accept the Explanatory Note inserting a new exclusion (d) to heading 85.37 (Annex F/27/5 to Doc. NR0470E1), relating to infrared universal remote controllers. This was as a result of a US court decision. For that reason, the US Administration had submitted a non-paper to the RSC seeking a legal text amendment to the Nomenclature for 2007. He informed the Sub-Committee that his administration would submit this proposal formally as soon as possible.
2. On 25 September 2003, the Secretariat received the following Note from the US Administration.

II. NOTE FROM THE US ADMINISTRATION

"Possible New Note 6 to Chapter 85

3. In preparing for the 28th Session of the Review Sub-Committee's discussion of possible amendments to the Explanatory Notes in Doc. NR0435E1, it came to our administration's attention that our classification of infrared universal remote controllers is at variance with an HSC classification ruling.
4. The United States is unable to follow Classification Opinion 8543.89/3 because of a national court ruling that directs classification of the products to heading 85.37 [Universal Electronics, Inc. v. United States, 112F.3d 488 (CAFC 1997)].

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5. It is customary to consider clarifying amendments to the Nomenclature when requested by administrations to assist them in following a Classification Opinion that is at variance with their national judicial rulings. For example, during the last review cycle, text specifically mentioning insulated beverage bags was added to heading 42.02 to assist administrations in complying with Classification Opinion 4202.92/1.
6. With this process in mind, the **United States** proposes that the Nomenclature be amended to clarify the classification of cordless infrared universal controllers. We realise that it is late in the review cycle. However, this matter only recently came to our attention. Accordingly, we ask the indulgence of the Committee to specifically reflect the HSC decision in the legal text of the HS.
7. The **United States** offers the following new Note to Chapter 85. It reflects, in part, the relevant Classification Opinion and incorporates the proposed modifications to the Explanatory Notes :

CHAPTER 85.

New Note 6.

Insert the following new Note 6 :

“6.- Heading 85.37 does not include cordless infrared devices for the remote control of television receivers, video receivers or other electrical equipment (heading 85.43).”

8. Because this matter was raised at the 28th Session of the RSC during the discussions involving the Comprehensive Review of the Explanatory Notes, the Secretariat requested that the **United States** submit this note to the Harmonized System Committee for consideration at its next session.”

III. SECRETARIAT COMMENTS

9. The Secretariat would draw the Committee’s attention to the fact that this proposal has been submitted after the self-imposed deadline for new proposals for this Review Cycle of the end of June 2003. The Secretariat would note that concern was expressed during the discussions in the Review Sub-Committee on this new proposal that other administrations had to turn down proponents of new proposals from the trade and elsewhere because they were received after the deadline. The Secretariat understands this point of view. However, as this problem has only recently surfaced and as it owes its origins directly to a decision by this Committee, the Secretariat would not be opposed to dealing with this matter during this Review Cycle.
10. Should the Committee be in a position to consider this proposal, the Secretariat has presented the text in the Annex in bilingual format. For its part, the Secretariat could accept the proposed text, as it is generally a reproduction of the proposed exclusion note (d) to heading 85.37 which the Review Sub-Committee has been considering within the framework of the Comprehensive Review of the Explanatory Notes. The **US** proposal would merely raise this Note to the legal level.

IV. CONCLUSION

11. The Committee is invited to rule on the insertion of this new Note 6 to Chapter 85 taking into account the Note from the US Administration and the Secretariat's comments when it examines this agenda item.

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