



HARMONIZED SYSTEM  
COMMITTEE

NC0147E1

-  
24th Session

O. Eng.

Brussels, 4 October 1999.

PROPOSAL BY ARGENTINA FOR THE AMENDMENT  
OF THE SUBHEADING EXPLANATORY NOTE TO SUBHEADING 8524.39

(Item VIII. 5 on Agenda)

Reference documents :

42.049 (HSC/21)  
42.100, Annexes H/10 and L/7 (HSC/21 – Report)  
42.724 (HSC/22)  
NC0084E1 (HSC/23)  
NC0090E2, Annex IJ/16 (HSC/23 – Report)

I. BACKGROUND

1. On 14 September 1999, the Secretariat received the following additional Note from the Argentine Administration concerning amendments to the Subheading Explanatory Note to subheading 8524.39.

II. NOTE FROM THE ARGENTINE ADMINISTRATION

2. “(. . .) The Argentine Administration wishes to enlarge its previous note, included in Doc. NC0084E1, so that the Harmonized System Committee gives us its opinion as to the classification of the following goods :
  - (i) Discs for laser reading systems, containing the software program called “Windows ’98”;
  - (ii) Discs for laser reading systems, containing the Encyclopedia called “Encarta ’99”; and
  - (iii) Discs for laser reading systems, containing an entertainment game called “Fly Simulator”.
3. The classification of these widely known products which are representative of the question at issue will be useful in preventing legal interpretative problems with the application of General Interpretative Rule 6. This Administration understands that the products should be classified in subheading 8524.31, based on what is stated in Doc. NC0084E1.”

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### III. SECRETARIAT COMMENTS

4. The Secretariat would recall first of all that, following the adoption by the Committee of the new Subheading Explanatory Notes to subheadings 8524.39 and 8524.99 (Doc. 42.100, Annexes H/10 and L/7 (HSC/21 – Report), Amending Supplement No. 6 – June 1998), the Argentine Administration had requested the Committee to review these Subheading Explanatory Notes, given an apparent conflict between these Subheading Explanatory Notes and the provisions of Item (8) of the Explanatory Note to heading 85.24. The Secretariat concluded that the Subheading Explanatory Notes concerned were not in conformity with the said Item (8) and suggested to amend the latter to read : “(8) **Media** on which instructions, data, sound or images have been recorded (e.g., magnetic tapes, disc packs, diskettes and cassettes for machines of headings 84.69 to 84.72)” (paragraph 15 of Doc. 42.724). In addition, the Secretariat suggested the amendment of the Subheading Explanatory Notes by deleting the expression “representations of instructions, data, sound or image” and substituting “representations of sound or images in addition to instructions and data” (paragraph 17 of Doc. 42.724).
5. Secondly, the Argentine Administration, argued in its second Note (paragraph 7 of Doc. NC0084E1 (HSC/23)) that it would be better to differentiate the products in question on the basis of the format of the recording on the media; i.e., whether the recording has an audio or video format (and can be read by machines of Chapter 85) or whether the recording is in a computer format (to be read by machines of Chapter 84). In the first case, "discs for laser reading systems" would fall in subheading 8524.32 or subheading 8524.39 and in the second case they would fall in subheading 8524.31. To achieve this, the Argentine Administration suggested a redraft of (i) Item (8) of the Explanatory Note to heading 85.24 and (ii) the Subheading Explanatory Note to subheading 8524.39. The latter would subsequently be re-allocated to subheading 8524.31.
6. Thirdly, the Secretariat fails to see how classification at subheading level of discs for laser reading systems, can be affected by the wording of Item (8) of the Explanatory Note to heading 85.24. This Explanatory Note is intended to clarify the scope of that four-digit heading and, consequently, does not affect in any way the scope of the subheadings of that particular heading. This being said, the Secretariat maintains its proposal to amend the wording of Item (8) with a view to reflecting advancements in technology (see paragraph 14 of Doc. 42.724 and paragraph 4 above).
7. Fourthly, the Secretariat would recall that, under the Article 16 procedure, the structure of subheadings 8524.31 to 8524.39 has been revised, and will read as follows :
- 8524.31 -- Software
- 8524.33 -- Digital audio discs
- 8524.34 -- Digital video discs
- 8524.39 -- Other
- 8524.40 - Magnetic tape software.
8. The above referenced structure will be accompanied by a corresponding Subheading Note, reading as follows :

“2.- For the purposes of subheadings 8524.31, 8524.40 and 8524.91, the term “software” means programs or data that are recorded on diskette, compact disc, magnetic tape or any other suitable storage medium, which are designed to be executed or processed by an automatic data processing machine or other microprocessor-controlled device or apparatus, as well as instructions and data, whether or not incorporating sound or images, recorded in binary form and capable of being manipulated or providing interactivity to the user.

The term “software” does not include digital audio discs or other audio recordings of the type used with sound recording or reproducing apparatus of heading 85.19 or 85.20, nor 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.”

9. Finally, with respect to the classification of the products referred to in the latest Note from the Argentine Administration, the Secretariat notes that the discs in question apparently contain sound and images, in addition to instructions. On the basis of the statement of the Argentine Administration in Doc. NC0084E1 (which includes, inter alia, proposals to amend Item (8) of the Explanatory Note to heading 85.24 and the Subheading Explanatory Note to subheading 8524.31), that Administration considers that the discs at issue can be classified in subheading 8524.31. The Secretariat is, however, of the view that the products would be classifiable in subheading 8524.39, as the wording of present subheading 8524.31 does not embrace such products. This classification is supported by the Subheading Explanatory Note to subheading 8524.39.
10. The Secretariat leaves it to the Committee to decide :
- (i) whether the products referred to by the Argentine Administration are classifiable in subheading 8524.31 or 8524.39; and
  - (ii) whether the Explanatory Note to heading 85.24 and the Subheading Explanatory Note to subheading 8524.39 should be amended, and if so, whether that should be done along the lines as suggested by the Argentine Administration (see paragraphs 9 and 10 of Doc. NC0084E1), which enlarge the scope of subheading 8524.31, or as suggested by the Secretariat in paragraphs 15 and 17 of Doc. 42.724.

#### IV. CONCLUSION

11. The Committee is invited to take account of the latest Note from the Argentine Administration and the comments of the Secretariat, when examining this Agenda item.
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