



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0031E1

-
19th Session

O. Fr.

H2-1

Brussels, 26 February 1999.

PROPOSAL BY CHINA CONCERNING ELECTRONIC COMMERCE VIA THE INTERNET

(Item II.B.4 on Agenda)

I. BACKGROUND

1. On 13 January 1999, the Secretariat received a Note from the Chinese Administration with a proposal to amend the Nomenclature to take account of the development of electronic commerce via the Internet.

II. NOTE BY CHINA

2. "The trading and delivering of software via the Internet has become common practice in recent years. However, because there is no carrying media for the software during its importation or exportation, it is difficult to find a proper heading in the Harmonized System for these invisible, intangible special commodities. This is a new challenge with the rapid development of technology.

The Chinese Customs Administration has recently faced this kind of question. A company declared to the Customs that it has imported some software through the Internet and asked to pay duties. The Chinese Customs Administration does consider this kind of software to be a commodity. However, due to the above reasons it is fairly difficult for the Customs to decide on a suitable tariff code. The only intangible, invisible commodity the Customs could find in the Harmonized System is electrical energy in Chapter 27. The Chinese Customs Administration would therefore like to propose that the matter be discussed in the World Customs Organization at the coming session of the Review Sub-Committee."

3. The Chinese Administration proposes that the structured nomenclature of Chapter 85 be amended as follows :

File No. 2767

ARTICLE 16 PROCEDURE

AMENDMENTS TO THE NOMENCLATURE

CHAPTER 85

At the end of Chapter 85

Insert :

“85.49 Software without carrying media
8549.00 Software without carrying media”

III. SECRETARIAT COMMENTS

4. Firstly, as far as the Secretariat is aware, no country currently regards electronic transmissions as imports for the purpose of levying Customs duties.
5. A distinction has to be made between, on the one hand, tangible goods which are ordered via the Internet but are delivered via normal commercial distribution channels and, on the other hand, intangible goods which, by definition, do not physically cross a frontier, e.g. the downloading of software or publications, or a subscription to databases.
6. Some countries consider downloading of software to be a provision of services, while acknowledging that it would be difficult to define an electronic transmission in terms of commodity classification.
7. However, insofar as the HS might be used for purposes other than Customs purposes and bearing in mind the boom in international electronic commerce, the Secretariat feels that China's proposal is worthy of consideration.
8. As the Chinese Administration has pointed out other intangible commodities are included in the Nomenclature, e.g., electrical energy (heading 27.16). It should, however, be noted that this is a heading whose use is left to countries' discretion, as indicated by the reference "Optional heading" in brackets at the end of the heading text.
9. The Secretariat feels that this solution might also be envisaged for electronic commerce, if countries feel that there is a need.
10. This is an important and complex question which should be given due consideration by Administrations. In view of the late arrival of the Chinese proposal, the Secretariat believes that administrations should be given sufficient time to study the many complications of a new heading in the Nomenclature for electronic commerce. The Secretariat would therefore propose that a study be undertaken which could be considered at the Fall '99 Sessions of the Review Sub-Committee and the Harmonized System Committee.

IV. CONCLUSION

11. The Sub-Committee is invited to decide what action to take in respect of China's proposal concerning electronic commerce via the Internet.
