



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
24th Session
-

NR0172E1
(+ Annexes I and II)
O. Eng.

Brussels, 19 June 2001.

POSSIBLE AMENDMENTS TO THE EXPLANATORY NOTE TO HEADING 84.71

(Item III.A.4 on Agenda)

Reference documents :

NC0160E2, Annex G/17 (HSC/24 – Report)
NR0117E1 (RSC/22)
NR0133E2, Annex D/7 (RSC/22 - Report)

NR0140E1 (RSC/23)
NR0165E2, Annexes C/5 and E/1 (RSC/23 – Report)
NC0430E2, Annexes H/7, H/9 and Q/24 (HSC/27 - Report)

I. BACKGROUND

1. At its 23rd Session (March 2001), the Sub-Committee discussed draft amendments to the Explanatory Note to heading 84.71 and related headings. It decided, however, to re-address a number of issues raised during the discussions, which were placed in square brackets.
2. At its 27th Session (May 2001), the Harmonized System Committee provisionally adopted a number of amendments to the Explanatory Note to heading 84.71 and related headings in order to delete references to obsolete equipment (Doc. NC0430E2, Annexes H/7 and Q/24 – HSC/27 Report). However, with a view to ongoing discussions within the Review Sub-Committee on possible amendments of the Explanatory Note to heading 84.71, and to facilitating discussions in the Sub-Committee, the Committee agreed to have the amendments concerned incorporated into the Sub-Committee's working document.
3. In the context of clarifying the line of demarcation between the units of heading 84.71 and accessories of heading 84.73, the Committee, also at its 27th Session, agreed to send related draft amendments of the Explanatory Note to heading 84.71 to the Sub-Committee for consideration (Doc. NC0430E2, Annex H/9 – HSC/27 Report). After the preparation of the Committee's working document, the Secretariat received a note of the US Administration, which was published without comments. This note is reproduced in Annex I to this document to facilitate the discussions in the Sub-Committee.

File No. 2686

II. SECRETARIAT COMMENTS

4. The Secretariat would like to point out first that it has incorporated (i) the amendments provisionally approved by the Committee at its 27th Session and (ii) draft amendments to clarify the line of demarcation between the units of heading 84.71 and accessories of heading 84.73, as requested by the Committee. These texts, which are set out in Annex II to this document, together with the other draft amendments to be considered by the Sub-Committee, have been identified by shading and boxing, respectively.

5. With respect to the issues to be discussed, the Secretariat would like to offer the following comments.

(i) Storage units (English version only)

6. The Secretariat agrees that the reference to “unit(s)” in connection with the term “storage” would not in all circumstances be appropriate, since the expression “storage unit” presupposes the presence of a separate piece of equipment for storing data, whereas in some cases the data is stored (temporarily) in integrated circuits placed on the motherboard of the central processing unit (CPU). The Secretariat, therefore, suggests inserting a reference to “storage capacity” as and where appropriate. In the other cases a reference to “storage unit(s)” may be appropriate. The alternative reference has been placed in square brackets, together with the reference to “storage unit(s)” in Annex II. For ease of reference, they have been underlined.

(ii) Reference to “system”

7. The Sub-Committee, at its last session, agreed to rephrase the wording of the third paragraph on page 2 of the Annex II to this document (second paragraph on page 2 of the RSC/23 working document), in order to reflect the provisions of Subheading Note 1 to Chapter 84. On further reflection, the Secretariat considers that the text at issue could be improved by replacing the last sentence by the following one : “In the latter case, the units form a “system” when it comprises at least the central processing unit, an input unit and an output unit (see Subheading Note 1 to this Chapter).” (French version : “[Dans ce dernier cas, les unités constituent un "système" pour autant que celui-ci comporte au moins l'unité centrale de traitement, une unité d'entrée et une unité de sortie] (voir la Note 1 de sous-position de ce Chapitre.”). The agreed proposed texts have been placed in square brackets pending the decision of the Sub-Committee, and have been underlined for identification purposes.

(iii) Local area network

8. The Sub-Committee could not reach consensus on the proposal to amplify the text of the sixth paragraph on page 2 of Annex II to this document, by saying “. . . thus constituting a data processing system, known as a local area network (LAN)” (proposed part underlined). The text concerned was placed in square brackets, leaving time for delegates to consider this proposal during the intersession. The Secretariat understands the proposed text saying that a local area network (LAN) is a data processing system, but has some doubts whether this statement is correct in all cases. According to Subheading Note 1 to Chapter 84, a system comprises at least a central processing unit, one input unit and one output unit. A LAN is normally used to connect two or more systems (consisting of a CPU, a keyboard and a monitor) with, for example a printer. Consequently, a LAN itself is not a data processing system, but merely interconnects two or more of such systems. Nonetheless, the Secretariat leaves it to the Sub-Committee to decide. The text concerned is placed in square brackets and underlined for identification purposes.

(iv) Remote input or output units

9. In its initial proposal, the Secretariat had deleted the current penultimate paragraph on page 1403 (i.e., "These systems may include remote input or output units in the form of data terminals."), since (i) in the view of the Secretariat this type of systems had become obsolete and (ii) a new paragraph had been proposed referring to LANs. Based on the questioning of the appropriateness of this deletion by one delegate, the Sub-Committee agreed to re-address this issue at its next session. Pending the outcome of the discussions, the text was placed in square brackets. For ease of reference the Secretariat has underlined the paragraph at issue.

(v) Reference to Note 5 (E) to Chapter 84

10. The Sub-Committee agreed to address the issue of whether a reference to the provisions of Note 5 (E) to Chapter 84 should be included in Part (I) (A) of the Explanatory Note to heading 84.71, on the basis of a new proposal. At the time of preparing this document, the Secretariat had not yet received such a proposal. Having said that, the Secretariat has some doubts whether it would be appropriate to include the suggested reference in the Explanatory Note to heading 84.71, since Part (E) of the General Explanatory Note to Chapter 84, on page 1235, already refers to these provisions. Nonetheless, if the Sub-Committee agrees, the following text could be added to the last paragraph of Part (I) (A) (on page 10 of Annex II to this document) :

"(See Part (E) of the General Explanatory Note to Chapter 84 with respect to the classification of machines incorporating or working in conjunction with an automatic data processing machine and performing a specific function (Note 5 (E) to this Chapter)."

(French version : "(Voir la partie E des Considérations Générales du présent Chapitre concernant le classement d'une machine incorporant une machine automatique de traitement de l'information ou travaillant en liaison avec une telle machine et exerçant une fonction propre (Note 5 E) du Chapitre).")

(vi) Third paragraph of Part (D)

11. In its initial proposal, the Secretariat had suggested inserting a new third paragraph in Part (D), following the decision of the Committee vis-à-vis the classification of apparatus (units) performing a function other than data processing, when presented separately. The Sub-Committee could, however, not agree on the actual wording and the relevant parts were placed in square brackets, pending discussions at the next session.
12. The Secretariat feels that the first part in square brackets is a further qualification (or restriction) of the unit at issue, since the conjunction "and" (French version : "et") is used. In this context, it should be noted that the article "the" (French version : "la") is used, to indicate that the commodity at issue is the one which could fall within the references of the preceding paragraph. That being the case, the Secretariat considers that the phrase "and works in conjunction with an automatic data processing machine" (French version : "et travaille en liaison avec une machine automatique de traitement de l'information") would be superfluous and should, therefore, not be included.
13. The Secretariat sees no problems in inserting the phrase "(see Note 5 (E) to this Chapter)" (French version : "(voir la Note 5 E) du Chapitre.") at the end of this paragraph. However, pending the outcome of the discussions, the text has been placed in square brackets.

14. The paragraph at issue has been underlined in Annex II to this document in order to facilitate the Sub-Committee's work.

(vii) New paragraph concerning the classification of accessories

15. With respect to the proposed new paragraph clarifying the line of demarcation between the units of heading 84.71 and accessories of heading 84.73 (see paragraph 3 above), the Secretariat would simply like to point out that, unlike the Secretariat suggestion, the US proposal does not refer to the exclusion provisions of Note 5 (E) to Chapter 84.
16. To facilitate the Sub-Committee's discussions, the Secretariat would like to recall the Committee's conclusion on this issue, which reads as follows (Doc. NC0340E2, Annex H/1 (HSC/26 – Report)) :
- (i) There was no definition in the Harmonized System of the term "accessories";
 - (ii) To be classified in heading 84.71 as a unit for an automatic data processing (ADP) machine, the unit should perform a data processing function, should meet the criteria set out in Note 5 (B) to Chapter 84, including the introductory paragraph, and should not be excluded by the provisions of Note 5 (E) to that Chapter; and
 - (iii) If a unit did not meet the criteria set out in Note 5 (B) to Chapter 84, or was not performing a data processing function, it should be classified according to its characteristics by application of General Interpretative Rule (GIR) 1, if necessary in combination with GIR 3 (a).
17. Pending the outcome of the discussion, the Secretariat has placed the alternative texts in square brackets in Annex II. To facilitate identification, the Secretariat has placed the texts at issue in a box.

III. CONCLUSION

18. The Sub-Committee is invited to consider the proposed draft amendments set out in Annex II to this document, taking into account the observations of the US Administration set out in Annex I and the comments of the Secretariat set out in paragraphs 4 to 17 above.

* * *

Note from the US Administration

1. "The US Administration appreciates the Secretariat's efforts in seeking to clarify the distinction between the units of heading 84.71 and the accessories of heading 84.73. We have examined the proposed text and find much with which we are able to agree. We have proposed a simpler text which retains the essence of the Secretariat proposal while tracking more closely the legal text. Our text is attached as an annex to this note.
2. We have substituted the word "good" for "accessory" for clarity.
3. We suggest that we refer to the criteria in Note 5 which relate to the definition of unit, namely Note 5 (B) and (D). We can agree with a reference to the introductory paragraph of Note 5 (B). In our view, this then makes it unnecessary to refer to the provisions of Note 5 (E). The essence of Note 5 (E) is picked up in the last sentence of our proposed text.
4. Furthermore, we believe that the reference in our proposed last sentence should be to a specific function other than data processing, tracking as stated above, the language of Note 5 (E).
5. In regards to the Secretariat's proposed text for the Explanatory Note to heading 84.73, we believe that the proposed new penultimate paragraph is overly broad in that it expands the class of goods which are excluded from classification in heading 84.73 beyond those goods listed in the exclusions labelled (a) through (g) in the current text. We find that the current Explanatory Notes provide Customs officials sufficient guidance in this area. In our view, the proposed language for the Explanatory Note to heading 84.73 is unnecessary in clarifying the line of demarcation between the units of heading 84.71 and accessories of heading 84.73. Therefore, we recommend that no new text be added to the Explanatory Note to heading 84.73 at this time."

Annex to US Note

Heading 84.71. Part (I) (D). New eighth paragraph.

Insert the following new eighth paragraph :

"A good can only be classified in this heading as a unit of an automatic data processing system if it :

Meets the criteria set out in Note 5 (B) or 5 (D) to this Chapter, including the introductory paragraph of that Note. If it does not meet the above criteria or performs a specific function other than data processing it is to be classified according to its characteristics by application of General Interpretative Rule 1, if necessary in combination with General Interpretative Rule 3 (a)."

* * *