



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0228E1

-
25th Session
-

O. Eng.

Brussels, 5 February 2002.

POSSIBLE AMENDMENTS TO NOTE 3 TO CHAPTER 90
AND NOTE 1(M) TO SECTION XVI
(PROPOSAL BY THE CANADIAN ADMINISTRATION)

(Item III.B.15 on Agenda)

Reference documents :

NC0055E1 (HSC/23)	NR0141E1 (RSC/23)
NR0072E2, Annex C, paragraph 94 (RSC/20 – Report)	NR0152E1 (RSC/23)
NR0086E1 (RSC/21)	NR0165E2, Annex D/8 (RSC/23 – Report)
NR0093E1 (RSC/21)	NR0173E1 (RSC/24)
NR0095E1 (RSC/21)	NR0199E1 (RSC/24)
NR0101E2, Annex B/12 (RSC/21 – Report)	NR0205E2, Annex C/5 (RSC/24 – Report)
NR0101E2, Annex E/15 (RSC/21 – Report)	NR0214E1 (RSC/25)
NR0118E1 (RSC/22)	NR0234E1 (RSC/25)
NR0133E2, Annex D/8 (RSC/22 - Report)	

I. BACKGROUND

1. On 25 January 2002, the Secretariat received the following note from the Canadian Administration.

II. NOTE FROM THE CANADIAN ADMINISTRATION

2. “At the 24th Session of the Review Sub-Committee (RSC), Canada’s proposal to amend heading 90.06 to include digital cameras was discussed. It was suggested that under our proposal certain goods, such as phones incorporating a digital camera and video screen, would be classified in Chapter 90 because Note 1(m) to Section XVI excludes “goods of Chapter 90”. Although Canada is of the opinion that the goods cited would be classified by virtue of GIR 1 as “videophones” under heading 85.17, we understand the concern as it might apply to other goods incorporating a digital camera. Another delegate suggested that if it was decided digital cameras should be included in heading 90.06 such concerns could be addressed by having Note 3 to Section XVI apply to Chapter 90. Canada agrees.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 2690

3. While it was also noted that any necessary changes to the Section and Chapter Notes could be made in consequence of any decision to amend a heading, we feel presenting our approach for how to address those concerns may assist administrations in their consideration of our proposal (cited above).

4. Note 3 to Section XVI states that :

“...machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.”

If this provision also applied to Chapter 90, goods incorporating a digital camera (e.g., an ADP monitors with a built-in digital camera) would be classified according to their principal function.

5. Currently, Note 3 to Chapter 90 extends the provisions of Note 4 to Section XVI to that Chapter. **Canada** proposes that note be amended to read :

“The provisions of Note[s **3 and**] 4 to Section XVI apply also to this Chapter.”

(changes are emphasized in bold text and placed in square brackets)

6. However, Canada agrees that if a heading in Chapter 90 describes part of a goods' function it must be considered, at least in part, a good of Chapter 90. Note 1(m) to Section XVI excludes such goods from classification in Section XVI (Chapters 84 and 85), thereby preventing consideration of their “principal function”.

7. Canada proposes that note be amended to read :

“(m) Articles of Chapter 90[, **except by the application of Note 3 to this section**];”

(changes are emphasized in bold text and placed in square brackets)

That would ensure that goods whose primary function is described by a heading in Section XVI would not be excluded therefrom, while maintaining the general exclusion for goods of Chapter 90.

8. The amendments described in paragraphs 5 and 7 are necessary only if the amendments we have proposed for heading 90.06 or our new proposal to amend heading 90.09, or both, are adopted.”

II. SECRETARIAT COMMENTS

Proposed amendment of Note 3 to Chapter 90

9. The Secretariat would begin by drawing the Sub-Committee's attention to the fact that the Canadian proposal to extend the provisions of Note 3 to Section XVI to Chapter 90 mirrors the Brazilian proposal presented in Doc. NR0234E1 (Item III.A.11 on Agenda). The following Secretariat comments on that proposal are reproduced for the convenience of the Sub-Committee.

"Regarding the **Brazilian** proposal to have Note 3 to Section XVI apply as well to Chapter 90, the Secretariat is of the view that only adding a reference to that Note to Chapter 90 will not solve the problem of applying that Note to multifunction machines potentially classifiable in Chapters 84, 85 and 90. Note 3 to Section XVI applies to Chapters 84 and 85 and is restrictive in that sense. By saying that the provisions of Note 3 also apply to Chapter 90, the Secretariat understands that to mean that the restrictive nature of the application of Note 3 to Section XVI also applies when applying this Note to Chapter 90. In other words, when applying the provisions of this Note to Chapter 90, it is applied only to composite machines consisting of two or more machines classifiable in Chapter 90 and not to machines classifiable in other Chapters, e.g., Chapter 84 or 85. What is necessary, in the Secretariat's opinion, is a modification of Note 3 to Section XVI to say that it applies to Chapters 84, 85 and 90. In this regard, the Secretariat suggests the following :

New Note 3 to Section XVI :

"Unless the context otherwise requires, composite machines consisting of two or more machines classifiable in Chapters 84, 85 or 90, fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions referred to in Chapters 84, 85 or 90 are to be classified as if consisting only of that component or as being that machine which performs the principal function." "

10. The Secretariat would add the following in support of its contention that Note 3 to Section XVI is restricted to Section XVI. Current Note 3 to Section XVI makes reference to "machines". Current Note 5 to Section XVI reads "For the purposes of these Notes [i.e., the Section XVI Notes], the expression "machine" means any machine, machinery, plant equipment, apparatus or appliance cited in the headings of Chapter 84 or 85". As Note 3 to Section XVI is part of "these Notes" and as there is no reference to headings other than those of Chapter 84 and 85 in the definition of "machine", the Secretariat can only conclude that Note 3 to Section XVI is restricted to Section XVI.

Proposed amendment of Note 1 (m) to Section XVI

11. The Secretariat understands the **Canadian** proposal regarding current Note 1 (m) to Section XVI to be based on the reasoning that, without such an amendment, any product for which a Chapter 90 heading is under consideration would be excluded from Section XVI by virtue of Note 1 (m) irrespective of the text of Note 3 to that Section. The Secretariat finds it difficult to agree with this reasoning. In our view, Note 1 (m) only excludes "articles of Chapter 90", not all articles potentially classifiable in Chapter 90. In this connection, the Secretariat would point out that the Explanatory Notes cite several examples where goods of

Chapter 84 contain apparatus of Chapter 90 but still remain classified in Chapter 84. The Secretariat would refer the Sub-Committee to the Explanatory Notes to heading 84.51, Part (F), Item (1), page 1531, as well as to heading 84.81, paragraphs 1 to 4, page 1606. Even though the machines mentioned in those references contain apparatus classifiable in Chapter 90, the machines as a whole continue to be classified in a heading of Chapter 84. If current Note 1 (m) was to be interpreted the way the Canadian Administration suggests in paragraph 6 above, then these machines would be excluded from classification in Chapter 84. However, as these machines remain classified in Chapter 84, one may conclude that Note 1 (m) should be interpreted to refer to the principal function of the machine being that of an article of Chapter 90 and not just one of several functions. An interpretation of this Note as suggested by the Canadian Administration might lead to an inadvertent transfer of products out of Section XVI.

12. However, if the Sub-Committee agrees with the Canadian Administration that Note 1 (m) to Section XVI should be amended then the proposal suggested by Canada would offer a possible solution. The Secretariat leaves it to the Sub-Committee to decide on the interpretation of Note I (m) to Section XVI.

III. CONCLUSION

13. As indicated by **Canada** in paragraph 8 above, this proposal should only be considered if the Sub-Committee has agreed to the **Canadian** proposals with regard to digital cameras under Agenda item III.A.4. The Sub-Committee is invited to take account of the Note from the Canadian Administration in paragraphs 2 to 8, as well as the Secretariat's comments above, when it examines this agenda item.
-