



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
26th Session
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NR0286E1
(+ Annex)
O. Fr.

Brussels, 10 July 2002.

PROPOSAL BY THE **US** ADMINISTRATION TO AMEND
THE NOMENCLATURE TO HEADING 85.19
(Item III.A.16 on Agenda)

Reference documents :

NR0149E1 (RSC/23)	NC0497E1 (HSC/28)
NR0158E1 (RSC/23)	NC0452E1, paragraphs 55 to 57 (HSC/28)
NR0165E2, Annexes D/1, paragraphs 5 to 10 and D/7 (RSC/23 – Report)	NC0510E1, Annexes E, paragraph 2 and H/20 (HSC/28 – Report)
NC0430E2, Annex F, paragraphs 25 to 33 (HSC/27 – Report)	NR0219E1 (RSC/25)
NR0180E1 (RSC/24)	NR0265E3, Annexes C/9 and F/5 (RSC/25 – Report)
NR0202E1 (RSC/24)	NC0531E1, paragraphs 33 and 34 (HSC/29)
NR0205E2, Annexes C/12 and F/4 (RSC/24 - Report)	NC0590E2, Annex F, paragraph 15 (HSC/29 –Report)

I. BACKGROUND

1. At its 24th Session, the Sub-Committee examined two proposals for the possible review of the structured nomenclature to heading 85.19, namely : (1) a revised text that reflected the Secretariat's initial proposal as well as various ideas put forward by the **United States** and (2) a text proposed by the **Swiss** Administration which introduces, in particular, the possibility of separate status for players "with built-in or interchangeable memory", commercially known as MP3 players.
2. Where the **Swiss** proposal was concerned, the discussions revealed that there might be different types of MP3 apparatus, some of which incorporated sound reproducing apparatus while others did not.

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3. Having noted that a study of the different types of MP3 players might clarify the question of what amendments could be made to the structured nomenclature to heading 85.19, the Sub-Committee agreed to submit the classification question to the HSC. Consequently, the Sub-Committee decided to await the HSC's decision on the classification of MP3 players before continuing with its examination of a possible new structured nomenclature for heading 85.19.

II. SECRETARIAT COMMENTS

4. The Secretariat wishes to point out that the classification of MP3 players was examined at the HS Committee's 29th Session, in May 2002 (see Doc. NC0590E2, Annex H/14 - HSC/29/May 2002 - Report).
5. On that occasion, certain delegates argued that MP3 players which use electronic flash memory should be considered to be sound recording devices of heading 85.20. However, in their view MP3 players using only an external flash memory card should not be considered to be recording devices and should, therefore, be classified in heading 85.19 as sound reproducing apparatus, not incorporating a sound recording device.
6. Other delegates took the view that the transcription of data files was not sound recording in the sense of heading 85.20. They considered that classification should be based on the function of the apparatus and not its use. Therefore, they considered that MP3 apparatus which could only reproduce sound from a preloaded electronic file should be considered to be sound reproducing apparatus of heading 85.19.
7. When the question was put to a vote, a large majority of delegates supported the view that the expression "sound recording" used in the text of heading 85.20 should be interpreted in a broad sense, i.e., that it also covered the transcription of data files onto flash memory. The Committee then classified several types of MP3 players on the basis of this decision.
8. The Secretariat considers that the Review Sub-Committee may wish to resume its examination of the entire structured nomenclature of heading 85.19 in light of the HSC decision, which implies that only apparatus capable solely of reproducing sound, whether or not from preloaded electronic files, should be classified in heading 85.19.
9. It would appear that the proposal put forward by the **Swiss** Administration (see Doc. NR0202E1 - RSC/24) is consistent with the decision taken by the Committee, and could therefore be taken into consideration - particularly as it has been demonstrated that MP3 players are of increasing importance in world trade.
10. In this connection, the Secretariat has appended hereto the two texts already submitted to the Sub-Committee, namely (1) the Secretariat proposal (incorporating the draft texts as they emerged from previous discussions within the RSC) and (2) the **Swiss** proposal (put forward at the RSC's 24th Session, but left in abeyance pending the HSC's decision on MP3 players).

III. CONCLUSION

11. The Sub-Committee is invited to examine the proposed texts reproduced in the Annex to this document, in the light of the Secretariat's comments and, in particular, the HSC's decision concerning the interpretation of the expression "sound recording", referred to in paragraph 7 above.

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