



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
28<sup>th</sup> Session  
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NR0421E1  
(+ Annex)

O. Eng.

Brussels, 16 July 2003.

POSSIBLE AMENDMENT OF NOTE 5 TO CHAPTER 84

(SECRETARIAT PROPOSAL)

(Item III.A.23 on Agenda)

Reference documents :

NR0115E1 (RSC/22)  
NR0133E2, Annex D/5(RSC/22 – Report)  
NR0188E1 (RSC/24)  
NR0201E1 (RSC/24)  
NR0205E2, Annex E (RSC/24 – Report)  
NR0323E1 (RSC/26)

NR0332E3, Annex D/5 (RSC/26 – Report)  
NR0334E1 (RSC/WG/1)  
NR0335E1 (RSC/WG/1)  
NR0387E1 (RSC/WG/1)  
NR0400E3, Annex G (RSC/27 – Report)

I. BACKGROUND

1. At its 25<sup>th</sup> Session, the Harmonized System Committee agreed that it would be necessary to undertake a general study of Note 5 to Chapter 84 with a view to an amendment to ensure uniform application.
2. At its 22<sup>nd</sup> Session, the Review Sub-Committee agreed that a separate Working Group outside the Sub-Committee should be set up with a view to updating and clarifying Note 5 to Chapter 84, given the rapid development of information technology. This Working Group would examine Note 5 to Chapter 84, including any related legal provisions.
3. Parties participating in the Informal Working Group on restructuring Section XVI, which was held from 12 to 14 May 2003, requested the Secretariat to study the scope of Note 5 to Chapter 84 (i.e., the definition of automatic data processing (ADP) machines and the classification of machines connectable to ADP machines), taking into account, in particular, the following issues :

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- (i) ADP machines should be freely programmable;
  - (ii) Systems should remain classifiable in heading 84.71;
  - (iii) Certain units to be possibly included in heading 84.71 :
    - (a) Input units (keyboards/mouse/joystick/digitiser/trackball); and
    - (b) Sound/video cards.
  - (iv) Certain units (and other apparatus) to be possibly excluded from heading 84.71 :
    - (a) Printers, readers and scanners (magnetic/optical[/other]), copiers, fax machines;
    - (b) [Drive units];
    - (c) Networking equipment;
    - (d) Image reproduction apparatus (monitors/projectors/flat panel displays);
    - (e) Cameras;
    - (f) Plotters (from Chapter 90 or elsewhere); and
    - (g) Loudspeakers, microphones.
4. The Secretariat was asked to prepare a document for the 28<sup>th</sup> Session of the Review Sub-Committee.

## II. SECRETARIAT COMMENTS

5. Following the discussions in the Informal Working Group, the Secretariat has prepared a draft amendment to Note 5 to Chapter 84, which is reproduced in the Annex to this document.
6. The proposed amendment calls for the following comments.
7. The draft text takes into account observations previously received from various sources. It also takes into account the results of the discussions in the Informal Working Group (see paragraph 3 above).
8. The Secretariat has deleted the references to analogue and hybrid machines from proposed Note 5 (A), noting that such machines have become obsolete in international trade. Since all automatic data processing machines appear to use digital technology (i.e., integrated circuits), the term "digital" appears to be superfluous and the Secretariat, therefore, suggests deleting it from the text.
9. The Secretariat has also deleted the phrase referring to the capability of performing arithmetical computations specified by the user from Note 5 (A), since this condition no longer appears to be relevant.

### **Freely programmable**

10. With respect to the condition of free programmability, the Secretariat would like to recall the information received from the ICC, reproduced in the Annex to Doc. NR0201E1. The following has been excerpted from that note :

“An ADP machine (a.k.a. computer) is freely programmable. The capability to be freely programmed means that computers are capable of being programmed by the user to perform a wide range of functions. It is up to the user to take advantage or not to take advantage of the full functionality.

In other words, by virtue of the freely programmable characteristic, computers have a “generic” or “general function” to process all types of data including programmers’ code, numbers, text, audio, video, etc. Processing in the context of computers includes the ability to freely manipulate data (edit, compose and combine different types of data) and not simply reproduce it. As general-function machines, computers are capable of, and used for, a variety of applications including word processing, financial management, computer-aided design, behavioural simulation (e.g., reaction of designs to wind or material resistance), desktop publishing, games, and education. The only limitation in terms of applications is the ability of the user to translate his/her task into a form that can be processed by the computer.”

### **ADP machines presented in the form of a system**

11. The first sentence of current Note 5 (B) to Chapter 84 stipulates that ADP machines may be in the form of systems consisting of a variable number of separate units. This part of the Note was taken from Note 3 (B) to Chapter 84 of the Customs Co-operation Council Nomenclature (CCCN). Unlike the Harmonized System, the CCCN did not have a (general) legal provision similar to the one provided for in Note 4 to Section XVI of the HS. Consequently, in order to classify a number of components comprising an ADP system presented together, as a single machine, the provisions laid down in CCCN Note 3 (B) to Chapter 84 were indispensable in the CCCN.
12. The Secretariat takes the view that the provision laid down in the first sentence of Note 5 (B) is superfluous in the Harmonized System, given the existence of Note 4 to Section XVI. Under the provisions of that Note, a central processing unit, a keyboard and a monitor (the latter two to be connected to the first component either by wire or wireless), presented together, will clearly perform a function covered by one of the headings of Chapters 84 or 85, i.e., the function of automatic data processing, which is referred to in heading 84.71. Therefore, these components could be classified together as a single machine in heading 84.71 on the basis of Note 4 to Section XVI.
13. In addition, it appears to the Secretariat that in international trade the majority of ADP machines are presented in the form of separate units (central processing units (whether or not with built in disk drive(s)), monitors, keyboards, printers, etc.), rather than in the form of systems.
14. Taking the above into account, the Secretariat suggests deleting the first sentence of current Note 5 (B) to Chapter 84. If it is considered necessary, a paragraph could be included in the General Explanatory Note to Section XVI or in the Explanatory Note to heading 84.71, stipulating that the machines of that heading may be presented in the form of a system. This Explanatory Note could be based on current Subheading Note 1 to Chapter 84. The sentence at issue has been placed in square brackets in the Annex, pending the outcome of the discussions.

### **Separately presented components**

15. As indicated in paragraph 3 above, the Informal Working Group preferred that certain components (or other apparatus) which are connectable to an ADP machine, should be provided for in specific headings and should, therefore, be excluded from heading 84.71.
16. Taking the above-mentioned considerations into account, the Secretariat has redrafted paragraphs (B) to (E) of current Note 5 to Chapter 84. It is to be noted, in particular, that units meeting the conditions set out in proposed Note 5 (B) (i) to (iii), will remain classifiable in heading 84.71. New Note 5 (C), however, excludes certain apparatus from this description.

### **Heading 84.71**

17. Since Note 5 delineates the scope of heading 84.71, the Secretariat suggests, if the new concept of Note 5 is adopted, aligning the text of heading 84.71 on the new scope of Note 5, by deleting the reference to magnetic or optical readers. The Secretariat has drafted an amendment to heading 84.71 to that effect, which is reproduced in the Annex to this document.

### **Note 2 to Chapter 84**

18. If the Sub-Committee agrees with the exclusion of printers from heading 84.71 the last paragraph of Note 2 to Chapter 84 should be updated.

### **Subheadings of heading 84.71**

19. The Secretariat will prepare draft amendments to the structured nomenclature to heading 84.71, once the scope of that heading is agreed upon.

### **Explanatory Notes**

20. The Secretariat has refrained from preparing any amendments to the Explanatory Notes, pending the outcome of the discussions on this question.

## **III. CONCLUSION**

21. The Sub-Committee is invited to examine the proposal to amend Note 5 to Chapter 84, as set out in the Annex to this document, taking into account the comments of the Secretariat in paragraphs 5 to 20 above.

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