



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
28th Session
-

NR0424E1
(+ Annex)

O. Eng.

Brussels, 8 July 2003.

POSSIBLE COMBINATION OF HEADINGS 85.23 AND 85.24

(SECRETARIAT PROPOSAL)

(Item III.A.26 on Agenda)

Reference documents :

NR0149E1 (RSC/23)	NR0332E3, Annexes D/2 and F/15 (RSC/26 – Report)
NR0175E1 (RSC/24)	NR0323E1 (RSC/26)
NR0205E2, Annex C/7, paragraphs 6 to 8 (RSC/24 – Report)	NR0333B1 (RSC/26)
NR0216E1 (RSC/25)	NR0332E3, Annex D/5 (RSC/26 – Report)
NR0265E3, Annexes C/6, paragraphs 8 to 11, and F/6 (RSC/25 – Report)	NR0334E1 (RSC/WG/1)
NR0229E1 (RSC/25)	NR0335E1 (RSC/WG/1)
NR0265E3, Annex D/5 (RSC/25 – Report)	NR0336E1 (RSC/WG/1)
NR0285E1 (RSC/26)	NR0387E1 (RSC/WG/1)
NR0332E3, Annexes C/14, paragraphs 8 to 12, and F/9 (RSC/26 – Report)	NR0400E3, Annex G, paragraph 12 (RSC/27 – Report)

I. BACKGROUND

1. In the context of the Third Review Cycle and in order to update the Nomenclature of the Harmonized System to conform with the terminology currently used in international trade, the Secretariat had proposed the amendment of heading 85.24 and its subheadings (Doc. NR0149E1 (RSC/23)). This proposal was re-examined at the Sub-Committee's 24th Session, during which the Sub-Committee agreed to delete the term "records" and to substitute "discs" in the English version of the heading text and approved the deletion of subheading 8524.10.
2. One delegate expressed concern about the need to improve the structure of this heading and especially the content of subheadings 8524.31, 8524.32 and 8524.91 which would undoubtedly become obsolete by 2007.

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3. In the light of these concerns, the Sub-Committee agreed to review this question at its next session and invited administrations to submit proposals to the Secretariat with a view to preparing a new document.

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4. At the request of the Delegate of **Switzerland**, the Sub-Committee agreed to retain the proposed new text of heading 85.24 in square brackets, for examination at its next session on the basis of a new proposal to be submitted by the **Swiss** Administration. This proposal would be aimed at improving the structured nomenclature for this heading through the deletion of a number of subheadings, including in particular subheadings 8524.31 and 8524.91, the contents of which were now obsolete.
5. One delegate pointed out that in keeping with what had been said about heading 85.20, the new structured nomenclature for heading 85.24 should also classify articles separately according to the reading mode employed (magnetic readers, optical readers and those with built-in memory).
6. Finally, the **EC** Delegate argued that the study on the new structured nomenclature for heading 85.24 should also take into account amendments which had been approved by the Council and included in the Recommendation of 25 June 1999, but had not been incorporated in the 2002 version of the Harmonized System because of a reservation entered by a Contracting Party.
7. The Sub-Committee therefore agreed to re-examine the text in square brackets on the basis of a document to be prepared by the Secretariat, which would incorporate the Swiss proposal and any other proposals which might be put forward by Contracting Parties in the light of the comments set out above.

RSC/26

8. At its 26th Session, the Sub-Committee held a preliminary exchange of views on the new structure of heading 85.24, on the basis of the **Swiss** Administration's proposals as revised by the Secretariat.
9. The Delegate of **Switzerland** introduced their proposal by indicating that the new structure proposed by his administration was aimed not only at achieving the two-fold objective of deleting obsolete items and catering for new technologies, but also at distinguishing, at one-dash subheading level, between media based on optical reading systems which had already been recorded and could not be rerecorded, and media based on optical reading systems in which the data were recorded on the medium by laser (i.e., by burning or heating), and could be rerecorded.
10. At this stage in the discussions, the Chairperson suggested that for the moment, the Sub-Committee should confine itself to making general remarks aimed at improving the new structure of this heading.
11. The main comments made by delegates can be summarised as follows :
 - (1) in the new structure proposed by **Switzerland**, the distinction drawn between media based on an optical reading system and other media based on optical or laser technologies was not clear in technological terms;

- (2) as heading 85.24 was intended to cover recorded media, the reference to software as a means of distinguishing between the various media was inappropriate, since software was a programme, i.e., it was the content recorded onto the media, and it was not possible to define media in terms of their content. Another criterion such as, for example, use, could perhaps be employed for this purpose;
- (3) similarly, the distinction between game and leisure software and data processing software was not easy to make, as many data processing programmes contained data for games and leisure, in the same way as certain programmes contained drawings or photographs originally intended for leisure purposes, but were also useable for data processing. In this context, the **US** Delegate reminded the Sub-Committee that the broad tendency towards convergence of video entertainment programmes and game software had been the reason for his administration's reservation on the text that had been developed during the last review cycle. In his administration's view, this tendency was continuing and was expected to accelerate in the future;
- (4) the creation of a subheading for integrated circuit modules was not advisable, given that these modules were not generally used as a medium for the distribution of pre-recorded data because of the high cost involved. In this connection, it might be helpful to look at world trade statistics for such goods;
- (5) cards incorporating a magnetic stripe should also be separately identified in a two-dash subheading within the one-dash subheading for magnetic media of all kinds. Moreover, within that subheading for magnetic media, separate provision should be made for magnetic tape, so that computer hard disks would not be grouped together with other recording media.

12. The Sub-Committee therefore agreed to return to this matter at its next session, and placed in square brackets the entire proposal by **Switzerland**, as amended by the Secretariat, in the light of the comments reported above and the views which will emerge during the discussions on the restructuring of the "high technology" Chapters.

13. The text placed in square brackets for heading 85.24 read as follows :

"85.24 Discs, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of discs, but excluding products of Chapter 37; integrated circuit modules (memories) for digital data storage.

8524.20 - Cards incorporating a magnetic stripe

8524.30 - Integrated circuit modules (memories) for digital data storage

- Magnetic media of all types :

8524.41 -- Software for automatic data processing machines, other than game or leisure software

8524.42 -- Game or leisure software

8524.49 -- Other

- Media based on an optical reading system :

8524.61 -- Software for automatic data processing machines, other than game or leisure software

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- 8524.62 -- Game or leisure software
- 8524.69 -- Other
 - Other media based on optical or laser technologies :
- 8524.71 -- Software for automatic data processing machines, other than game or leisure software
- 8524.72 -- Game or leisure software
- 8524.79 -- Other
- 8524.90 - Other".

(French :

"85.24 Disques, bandes et autres supports pour l'enregistrement du son ou pour enregistrements analogues, enregistrés, y compris les matrices et moules galvaniques pour la fabrication des disques, mais à l'exclusion des produits du Chapitre 37; modules des circuits intégrés (mémoires), pour le stockage de données numériques.

- 8524.20 - Cartes munies d'une piste magnétique
- 8524.30 - Modules des circuits intégrés (mémoires), pour le stockage de données numériques
 - Supports magnétiques de tout genre :
- 8524.41 -- Logiciels pour machines automatiques de traitement de l'information, autres que les logiciels de jeu et de loisir
- 8524.42 -- Logiciels de jeu et de loisir
- 8524.49 -- Autres
 - Supports basés sur un système de lecture optique :
- 8524.61 -- Logiciels pour machines automatiques de traitement de l'information, autres que les logiciels de jeu et de loisir
- 8524.62 -- Logiciels de jeu et de loisir
- 8524.69 -- Autres
 - Autres supports basés sur les technologies optiques ou laser :
- 8524.71 -- Logiciels pour machines automatiques de traitement de l'information, autres que les logiciels de jeu et de loisir
- 8524.72 -- Logiciels de jeu et de loisir
- 8524.79 -- Autres

8524.90 - Autres“.)

14. Parallel to the discussions on the structured nomenclature of heading 85.24, the Sub-Committee also held discussions on the text of headings 85.23 and 85.24 with a view to clarifying the classification of flash electronic storage cards. At its 26th Session it held a preliminary discussion, taking into account the comprehensive proposals concerning the revision of Chapter 85 presented by administrations.
15. Considering the terminology proposed for new Note 4 to Chapter 85 to be too restrictive, several delegates recommended improving the wording of this text so as not to exclude future technologies. In this respect, they suggested adding the expression "for example" after the description of technology relating to "solid-state, non-volatile data storage devices ("flash electronic storage cards")".
16. With regard to the wording of that same Note, another delegate referred to the text used in the classification decision regarding flash electronic storage cards by the HSC. He questioned whether the last part of the sentence concerning "discrete passive components" was really necessary.
17. The **Canadian** Delegate questioned if a change in the heading text was necessary as the HSC had ruled the goods to be "prepared media"; the proposed Note 4 could be considered as a subheading Note.
18. With regard to the Explanatory Notes to headings 85.23 and 85.24, another delegate drew the Sub-Committee's attention to the fact that, in accordance with the HSC decision to classify "flash memory cards" in those headings, other proposed amendments relating to this issue would be examined in parallel under the Article 8 procedure at the next HSC session (Item VII.19 – HSC/30).
19. After this preliminary discussion, the Sub-Committee agreed to place all the proposed texts in square brackets, in order to re-examine them in the light of subsequent developments concerning the revision of Chapter 85.
20. The texts placed in square brackets read as follows :

New Note 4.

- 4.- For the purposes of headings 85.23 and 85.24, "solid-state, non-volatile data storage devices ("flash electronic storage cards")" are devices with a connecting socket, comprising in the same housing one or more flash memories (for example, "FLASH E²PROM") in the form of integrated circuits mounted on a printed circuit board, whether or not comprising a programmed microcontroller in the form of an integrated circuit, and discrete passive components, such as capacitors and resistors.

(French :

- 4.- Au sens des n^{os} 85.23 et 85.24, on considère comme *dispositifs de stockage rémanent des données, à base de semi-conducteurs ("cartes à mémoire électronique flash")* les dispositifs ayant une fiche de connexion, comportant, sous une même enveloppe, une ou plusieurs mémoires flash ("E²PROM FLASH", par exemple) sous forme de circuits intégrés, montés sur une carte de circuits imprimés, même comportant un microcontrôleur programmé se présentant sous la forme d'un circuit intégré, et des composants discrets passifs (condensateurs, résistances, etc..)

Heading 85.23. Heading text.

Delete **“Chapter 37”** and substitute **“Chapter 37; solid-state, non-volatile data storage devices (“flash electronic storage cards”), not containing data”**.

(French :

Remplacer **“Chapitre 37”** par **“Chapitre 37; dispositifs de stockage rémanent des données, à base de semi-conducteurs (“cartes à mémoire électronique flash”), ne contenant pas de données”**.)

New subheading 8523.40.

8523.40 - Solid-state, non-volatile data storage devices (“flash electronic storage cards”)

(French :

8523.40 - Dispositifs de stockage rémanent des données, à base de semi-conducteurs (“cartes à mémoire électronique flash”))

Heading 85.24. Heading text.

Delete **“Chapter 37”** and substitute **“Chapter 37; solid-state, non-volatile data storage devices (“flash electronic storage cards”), containing data”**.

(French :

Remplacer **“Chapitre 37”** par **“Chapitre 37; dispositifs de stockage rémanent des données, à base de semi-conducteurs (“cartes à mémoire électronique flash”), contenant des données”**.)

New subheading 8524.70.

8524.70 - Solid-state, non-volatile data storage devices (“flash electronic storage cards”)

(French :

8524.70 - Dispositifs de stockage rémanent des données, à base de semi-conducteurs (“cartes à mémoire électronique flash”))

21. A draft text for Note 4 and draft Explanatory Notes were presented by the ICC in Doc. NR0336E1 (RSC/WG/1).
22. In the context of the review of Chapters 84, 85 and 90, the Administration of **Japan** had suggested creating a single heading covering all media for the storage of electric signals. This heading would cover the contents of current headings 85.23 and 85.24 (Doc. NR0335E1 (RSC/WG/1)).
23. Following the discussions in the Informal Working Group on restructuring Section XVI, which was held from 12 to 14 May 2003, the Secretariat was requested to study the possible combination of headings 85.23 and 85.24.

II. SECRETARIAT COMMENTS

24. Following the discussions in the informal Working Group, the Secretariat has prepared draft amendments to the Nomenclature with a view to combining current headings 85.23 and 85.24, taking into account the discussions held so far on the structured nomenclature. The draft proposals are reproduced in the Annex to this document.
- 6.

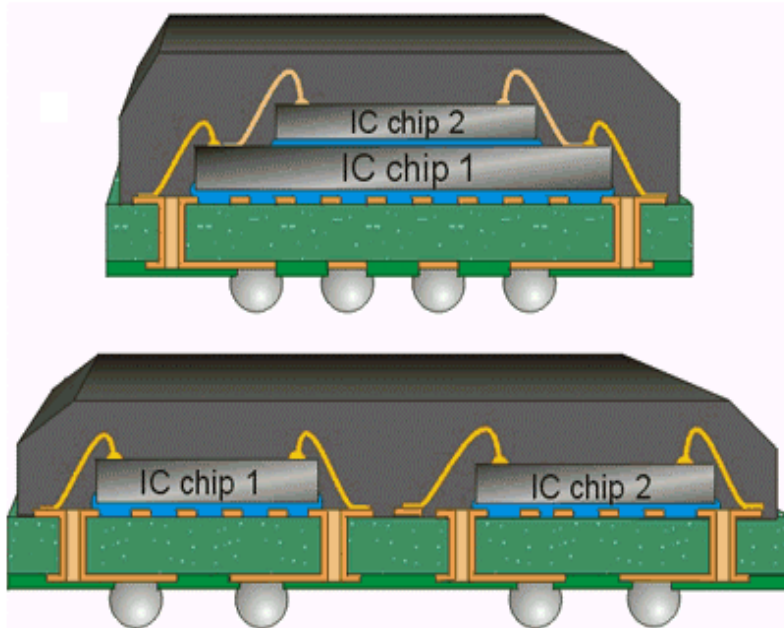
25. The draft calls for the following comments.
26. First, the Secretariat suggests numbering the combined heading as heading 85.23, since this will give the best possibility to use code numbers in numerical order, without skipping too many.
27. Second, with respect to the headings text, the Secretariat suggests using that of current heading 85.24, without the references to “recorded”, and taking into account the decision of the Sub-Committee to replace the term “records” by “discs” (Doc. NR0205E2, Annex C/7, paragraph 6 (RSC/24 – Report)).
28. With respect to the question whether or not a reference to flash electronic storage cards should be included in the heading text, the Secretariat would like to recall its comments in paragraphs 72 to 75 of Doc. NR0334E1 (RSC/WG/1), which read as follows :
72. The ICC and the Secretariat have proposed amendments to the texts of headings 85.23 and 85.24 with a view to clarifying the classification of “flash electronic storage cards”. These proposals were accompanied by a new Note 4 to Chapter 85, which defines the scope of this expression as follows :

Secretariat	ICC
For the purposes of headings 85.23 and 85.24, “solid-state, non-volatile data storage devices (“flash electronic storage cards”)” are devices with a connecting socket, comprising in the same housing one or more flash memories (for example, “FLASH E ² PROM”) in the form of integrated circuits mounted on a printed circuit board, whether or not comprising a programmed microcontroller in the form of an integrated circuit, and discrete passive components, such as capacitors and resistors.	For the purposes of headings 85.23 and 85.24, “solid-state, non-volatile data storage devices (“flash memory cards” or “flash electronic storage cards”)” are devices comprised of, in the same housing, one or more non-volatile semiconductor memories (for example, “FLASH E ² PROM”) in the form of integrated circuits mounted on a printed circuit board (“PCB”) or in a multi-chip integrated circuit (“IC”) package; whether or not including a microcontroller in the form of an integrated circuit; including discrete, passive components; and with a connective capability to a host appliance.

73. The ICC proposal for this new Note (which refers to “flash electronic storage cards” **and** “flash memory cards”) appears to cover new developments with regard to these cards, in particular with respect to multichip integrated circuit (“IC”) package technology or MCP. The following description and pictures of MCPs are reproduced from the Annex to Doc. NC0419E1 (HSC/27) (information received from the ICC) :

“(MultiChip Package) A chip package that contains two or more chips. It is essentially a multichip module (MCM) that uses a laminated, printed-circuit-board-like substrate (MCM-L) rather than ceramic (MCM-C). MCPs are also tested after packaging, whereas the bare die of ceramic-based MCMs were tested before packaging so as not to waste the more costly ceramic substrate if the chips were no good.

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Multichip Packages

These are examples of multichip packages with stacked chips (top) and side-by-side chips (bottom). The chips are wire bonded to the resin-based substrate which is attached to the printed circuit board using a ball grid array (BGA). (Illustration courtesy of Joseph Fjelstad.)”

74. With respect to the wording proposed by the Secretariat for headings 85.23 and 85.24, it should be noted that the expression “flash memory cards” is not used in its proposal. If the Working Group can agree with the ICC’s suggestion to include this expression, the Secretariat suggests amending the draft texts of headings 85.23 and 85.24 accordingly with a view to including this expression.
75. Finally, the **Swiss** Administration has suggested inserting a reference to “integrated circuit modules (memories) for digital data storage” at the end of heading 85.24 (Doc. NR0285E1 – RSC/26), if the Sub-Committee decides to incorporate a subheading for these apparatus in that heading. It should be noted that the **Swiss** proposal includes such modules, whether or not recorded.
29. The Secretariat leaves it to the Sub-Committee whether or not “flash electronic memory cards” should be referred to in the heading text, bearing in mind that the Committee classified these articles in current heading 85.23 by application of General Interpretative Rule 1. Pending the discussion, the Secretariat has placed the relevant parts in square brackets in the Annex.
30. With respect to the structured nomenclature of heading 85.23, the Secretariat has reproduced the subheadings proposed for current heading 85.24, as discussed by the Sub-Committee at its 26th Session (see paragraphs 8 to 13 above).
31. The Secretariat has placed the texts for proposed subheading 8523.30 in square brackets. The texts concerned are (i) the **Swiss** proposal and (ii) the Secretariat’s alternative based on the Secretariat’s proposal for the heading text. Proposed Note 4 to Chapter 85 could serve as the basis for a Subheading Note, if the Sub-Committee considers that there is no need for such provision at the four-digit level.
- 8.

32. With respect to the third one-dash subheading, the Secretariat suggests adding the word “other” at the beginning, thus avoiding any overlap with the first one-dash subheading.
33. With respect to the proposed two-dash subheadings for “software”, the following is to be noted. The **EC** Delegate, at the Sub-Committee’s 25th Session, argued that the study on the new structured nomenclature for heading 85.24 should also take into account amendments which had been approved by the Council and included in the Recommendation of 25 June 1999, but had not been incorporated in the 2002 version of the Harmonized System because of a reservation entered by a Contracting Party (Doc. NR0265E3, Annex C/6, paragraph 10 (RSC/25 – Report)). The relevant Subheading Note describing the term “software”, which appeared in the Recommendation of 25 June 1999, read as follows :

English	French
<p><u>New Subheading Note 2.</u></p> <p>2.- For the purposes of subheadings 8524.31, 8524.40 and 8524.91, the term “software” means programs or data that are recorded on diskette, compact disc, magnetic tape or any other suitable storage medium, which are designed to be executed or processed by an automatic data processing machine or other microprocessor-controlled device or apparatus, as well as instructions and data, whether or not incorporating sound or images, recorded in binary form and capable of being manipulated or providing interactivity to the user.</p> <p>The term “software” does not include digital audio discs or other audio recordings of the type used with sound recording or reproducing apparatus of heading 85.19 or 85.20, nor digital video discs or other video recordings of the type used with video recording or reproducing apparatus of heading 85.21 or with still image video cameras and other video camera recorders or digital cameras of heading 85.25.</p>	<p><u>Nouvelle Note 2 de sous-positions.</u></p> <p>2.- Aux fins des n°s 8524.31, 8524.40 et 8524.91, le terme <i>logiciels</i> s’entend des programmes ou des données enregistrés sur disquette, disque compact, bande magnétique ou tout autre support d’enregistrement adapté, qui sont destinés à être exécutés ou traités par une machine automatique de traitement de l’information ou un autre dispositif ou appareil commandé par microprocesseur ainsi que les instructions et les données, contenant ou non des sons ou des images, enregistrés sous forme binaire et pouvant être manipulés par l’utilisateur ou offrant à celui-ci une fonction d’interactivité.</p> <p>Le terme <i>logiciels</i> ne couvre ni les disques audio numériques ou autres enregistrements audio du type utilisé en liaison avec les appareils de reproduction ou d’enregistrement du son des n°s 85.19 ou 85.20, ni les disques vidéo numériques ou autres enregistrements vidéo du type utilisé en liaison avec les appareils d’enregistrement ou de reproduction vidéophoniques du n° 85.21 ou avec les appareils de prise de vues fixes vidéo et autres caméscopes ou les appareils photographiques numériques du n° 85.25.</p>

34. The above text could serve as a starting point when considering the subheading(s) at issue. Administrations are invited to present their view.
35. With respect to the wording of the proposed subheadings 8523.41, 8523.42, 8523.51, 8523.52, 8523.61 and 8523.62, the Secretariat suggests inserting the word “comprising” (French : “comportant”) at the beginning of the text, thus addressing the concern expressed by delegates at the Sub-Committee’s 26th Session (see paragraph 11 (2) above).
36. The Secretariat has also inserted a two-dash subheading for magnetic tape not comprising software (subheading 8523.43) with a view to not grouping together such tape with hard disks for automatic data processing machines (see paragraph 11 (5) above).
37. The Secretariat has placed subheading 8523.6 as proposed by **Switzerland** in square brackets, pending further information from the proponent vis-à-vis the criteria how to distinguish this group of commodities from that referred to in proposed subheading 8523.5.

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38. Finally, the Secretariat has refrained from preparing amendments to the Explanatory Notes, pending the outcome of the discussion on the legal text. In this context it is to be reminded that ICC had presented draft Explanatory Notes with respect to flash electronic memory cards (see Doc. NR0336E1 (RSC/WG/1)). This proposal will be taken into account when the draft Explanatory Notes will be prepared.

III. CONCLUSION

39. The Sub-Committee is invited to examine the proposal to amend the Nomenclature, as set out in the Annex to this document, taking into account the comments of the Secretariat in paragraphs 24 to 38 above.

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