



HARMONIZED SYSTEM  
COMMITTEE

-  
25<sup>th</sup> Session  
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## CLASSIFICATION OF THE "WHISTLER 1120"

(Item VIII.17 on Agenda)

### I. BACKGROUND

1. In a letter dated 12 January 1999 (Annex II), the Polish Administration requested the Secretariat's assistance with regard to the classification of the "Whistler 1120". The Secretariat responded in a letter dated 5 March 1999. The Polish Administration then wrote to the Secretariat on 30 April 1999, requesting further clarification (Annex III). Upon receiving this letter, the Secretariat consulted with a number of administrations with a view to determining where this apparatus was currently being classified. Administrations were in general agreement with the Secretariat that the "Whistler 1120" was principally an electrical signaling apparatus but there was no agreement on the heading. Some administrations favoured heading 85.12, while other administrations favoured heading 85.31. Because of this disagreement, the Secretariat proposed to add the classification of the "Whistler 1120" to the agenda of the 25<sup>th</sup> Session of the Harmonized System Committee. A description of the "Whistler 1120" is found in Annex I to this document.

### II. SECRETARIAT COMMENTS

2. The description of the "Whistler 1120" in Annex I describes a product that is presented as a set. However, it would seem that the apparatus itself gives the set its essential character. Consequently, it would seem to the Secretariat that the set should be classified in the heading which is appropriate to the apparatus, by application of GIR 3 (b). In respect of the apparatus, the Secretariat agreed with the Polish Administration that headings 85.26, 85.27 and 85.12, as well as 85.31, would merit consideration in this particular case.
3. The Secretariat would first point out that the Polish Administration is correct in saying that radio frequencies range from 3kHz to 3000 GHz. The Grand Dictionnaire Encyclopédique Larousse states that the upper limit of radio frequencies is normally fixed at 3000 GHz. The McGraw Hill Encyclopaedia of Science & Technology, Vol. 6, page 185, provides a chart of the Electromagnetic Spectrum. There is an overlap between radar and radio frequencies at the upper end of the radio frequencies.

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4. As the "Whistler 1120" is capable of (i) receiving microwaves ranging from 10.49 to 36 GHz and (ii) emitting visual and sound signals, it might, theoretically, be argued that it performs two complementary or alternative functions, i.e., reception and signaling. According to Note 3 to Section XVI, such a machine is to be classified as if consisting only of that component or as being that machine which performs the principal function. The first question to be examined then is whether the "Whistler 1120" performs two complementary or alternative functions.
5. The "Whistler 1120" incorporates, in principle, two components, i.e., a reception device and a signaling device. It has, however, only one purpose, i.e., to warn the driver of a motor vehicle that a speed detection device is operating in the vicinity. The warning is performed automatically by the signaling device when microwaves from 10.49 to 36 GHz are received. Consequently, the reception of the microwaves only aims at activating the signaling device. Since the reception of the microwaves cannot be separated from the signaling function, this function is not a separate function and, as a consequence, cannot be regarded as an alternative function. It would also appear difficult to regard the reception of microwaves as a complementary function, given that the reception does not complete, improve or perfect the signaling function; the reception is simply indispensable to the signaling function. Without the reception, there is no signal. In the Secretariat's view, the "Whistler 1120" has only one function and, as a consequence, Note 3 to Section XVI does not apply.
6. In the light of the foregoing, it appears to the Secretariat that the sole purpose of the reception operation is to switch on the signaling device. This function is achieved as an immediate consequence of the reception of the microwaves; i.e., the necessary connections to the electrical circuitry of the signaling device are carried out as a result of the reception. In other words, the reception device performs the function of a switch. If it was possible to separate the reception/switching function from the signaling function, it might be argued that such a component or device could fall in heading 85.36 as a switch or in heading 85.26 as a radio remote control apparatus. Some radio remote control apparatus are very simple, e.g., those used in lorries, which consist of a radio transmitter designed to send opening and closing signals to an entrance or gateway, the latter incorporating a receiver fitted with a switching device. Since the "Whistler 1120" is only capable of switching on, it appears that it does not perform a control function, which would preclude the possibility of regarding it as a radio remote control apparatus of heading 85.26.

#### **Heading 85.27**

7. The reception/switching operation is not related to radio-telephony, radio-telegraphy or radio-broadcasting. Consequently, it would seem to the Secretariat that heading 85.27 does not merit consideration.

#### **Heading 85.26**

8. The Explanatory Note to heading 85.26 mentions "air raid warning apparatus" (item (8), page 1490). The Secretariat understands that these apparatus incorporate not only a signaling device but also devices for emission and reception of radar signals and, therefore, they clearly perform two separate functions. Since "air raid warning apparatus" are very powerful radar apparatus, it is obvious that the signaling function is merely a secondary function and that is probably the reason why there is no exclusion of these apparatus in the Explanatory Note to heading 85.31.

9. If the Committee decides that the reception of radar signals or microwaves is subordinate to the signaling function, then the "Whistler 1120" should not be classified in heading 85.26 as radar apparatus. Such a conclusion would be supported by the fact that the "Whistler 1120" does not incorporate a radar transmitter and, as indicated in paragraph 6 above, as it appears that it is only capable of switching on, this would indicate that it does not perform a control function. This would preclude the possibility of regarding it as a radio remote control apparatus of heading 85.26.
10. The Secretariat would, however, draw your attention to the Compendium of Classification Opinions and more precisely, to Opinion 8527.90, (1), page 39b. The object of this Opinion is a simple device which emits a sound signal when a pre-set radio signal is received. The "Whistler 1120" emits a signal when a radar signal is received. By way of analogy, it might be argued that heading 85.26 would be appropriate for the "Whistler 1120".

### **Heading 85.12**

11. Heading 85.12 covers, *inter alia*, electrical signaling equipment of a kind used for motor vehicles. The "Whistler 1120" is an electrical device that emits visual and audio signals. If the Committee decides that the reception of radar signals or microwaves is subordinate to the signaling function, heading 85.12 is a possibility. However, the Committee must determine if it is "of a kind used for motor vehicles". If this is the case, then classification in heading 85.12 would be an option and this would then preclude classification in heading 85.31, as other signaling devices.

### **Heading 85.31**

12. Heading 85.31 does not provide an exhaustive list of signaling apparatus. However, from the examples mentioned in that heading, it is clear that the "Whistler 1120" constitutes electric sound or visual signaling equipment. Should the Committee decide that it is principally an electrical signaling apparatus but does not find heading 85.12 suitable, then heading 85.31 would be a viable option.

## **III. CONCLUSION**

13. The Secretariat leaves it to the Committee to decide on the classification of the "Whistler 1120" taking into account the views of the Polish Administration in Annexes II and III of this document and the comments of the Secretariat in paragraphs 2 to 12 above.

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**PRODUCT DESCRIPTION**

The "Whistler 1120" is an electrical apparatus designed to be used in a motor vehicle to warn the driver that a speed detection device, a "radar gun" or a "laser gun", is operating in the vicinity. It detects microwaves, ranging from 10.49 to 36 GHz, emitted by radar or laser guns operating on X, K, and selected Ka-SuperWideband frequencies. When these frequencies are detected, the apparatus emits distinct visual and audio signals (illumination of the laser alert LED coupled with a special audio tone). The "Whistler 1120" is presented as a set comprised of the radar/laser detector, windshield clip, straight power cord, fuses and spare parts, printed material and Operating Guide.

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LETTER FROM THE POLISH ADMINISTRATION 12 JANUARY 1999

The Polish Central Board of Customs asks if the laser radar detector called the "Whistler 1120" should be classified in heading 85.26 as "radar apparatus, radio navigational aid apparatus and radio remote control apparatus", in heading 85.27 as "reception apparatus for radio-telephony, radio telegraphy or radio-broadcasting..." or maybe in heading 85.12 as "electrical lighting or signaling equipment (excluding articles of heading 85.39), windscreen wipers, defrosters, and demisters, of a kind used for cycles or motor vehicles"?

We kindly inform you that the Polish Supreme Administrative Court annulated the President's of the Polish Central Board of Customs' decision in a question of classification of the Radar Laser Detector named "Whistler 1120" and recommended to send the question to the World Customs Organization.

We would be grateful for your urgent response.

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LETTER FROM THE POLISH ADMINISTRATION 30 APRIL 1999

The Polish Customs Administration would like to kindly thank you for your letter of 5 March 1999, concerning your consideration on the subject of the tariff classification of the radar laser detector "Whistler 1120"

In connection with this letter, we would like to request your explanation as to the reason heading 85.27 is excluded for this apparatus, since in our actual Nomenclature, which is based on the Combined Nomenclature, we have CN code 8527 90 92, which states "Portable receivers for calling, alerting or paging".

We would like to draw your attention to the HS Explanatory Notes to heading 85.27 (Part (A), page 1491) which reads "this apparatus is used for reception of signals ... by means of electromagnetic waves...", i.e., of very wide range of frequencies (without limitation to range of radio waves).

According to the definition contained in the Nowa Encyklopedia Powszechna (1996 edition, Volume II, page 315 and volume V, page 437), the range of radio frequencies are from 3 kHz to 3000 GHz and are used in radio-communication, radio broadcasting, television, radiolocation, radio-astronomy, spectroscopy, etc.

In light of the above, we would like to request your opinion as to whether heading 85.27 would not be a more appropriate classification for the apparatus "Whistler 1120". The basic operating principle of this apparatus is based on the receiving of electromagnetic waves, which is by a radar or laser gun and, as a result, alerts the driver. CN code 8527 90 92 covers reception apparatus for alerting.

I would be very grateful for your explanation, as soon as possible.

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