



HARMONIZED SYSTEM
COMMITTEE

NC0475E1

-
28th Session

O. Fr.

H5-12

Brussels, 11 October 2001.

CLASSIFICATION OF AN ELECTRIC STAINLESS STEEL CHAFING DISH

(Item VII.14 on Agenda)

Reference documents :

NC0329E1 (HSC/26)
NC0430B2, Annex H/15 (HSC/27 - Report)

NC0340B2, Annex IJ/2 (HSC/26 - Report)

I. BACKGROUND

1. At its 27th Session (May 2001), the Harmonized System Committee examined the classification of a stainless steel chafing dish. At the end of the discussions, given that there were still many doubts regarding this issue, the Committee invited the Secretariat to carry out a further study on the classification of the apparatus concerned, for re-examination at its next session.
2. During the intersession, the Swiss Administration sent the Secretariat the note which is reproduced below, together with two leaflets – the User's Manual and a leaflet illustrating the goods at issue. These documents will be available for consultation in the meeting room when this Agenda item is discussed.

II. NOTE BY SWITZERLAND (18 JULY 2001)

3. "As indicated in Doc. NC0329E1 of 30 October 2000, the HSC has examined the classification of a non-electric stainless steel chafing dish. The HSC classified this product in subheading 7323.93. This decision was approved by the Council (Article 8 of the HS Convention). No Contracting Party has requested the Secretary General to submit the question to the Council.

File No. 2829

4. After the presentation of Doc. NC0329E1 at the 27th Session, the Chairman asked the Committee, on the basis of paragraph 23 of the said document, whether it was appropriate to re-open the classification issue of a non-electric chafing dish which it had classified at the 24th Session. When the matter was put to a vote the Committee decided, by 27 votes to 1, not to re-open the issue of the classification of the non-electric chafing dish.
5. The Swiss Administration has made enquiries to the exporter. The exporter confirmed that the chafing dishes at issue are always supplied with non-electrical devices. The electric heating unit does not form part of the chafing dish. It is an additional device supplied as an accessory, alone and only upon request. The electric heating unit is not permanently fixed to the chafing dish. Moreover, these apparatus are not suitable for cooking food. They are designed essentially to maintain the water in the water pan, and hence the food, at a constant temperature. This confirmation corresponds to the information in the directions, namely "fill the water pan with hot water before use".
6. Goods are classified in the state in which they are presented. According to the exporter, the chafing dishes at issue are not supplied with electrical equipment. Hence the conditions surrounding this classification issue are not realistic. However, the classification of an electric chafing dish should not raise any problems.
7. The primary function of the chafing dishes at issue is to maintain food at a constant temperature (hot or cold). Hence the conditions set out in heading 84.19, namely the treatment of materials by a process involving a change of temperature, are not fulfilled. These chafing dishes should therefore be excluded from heading 84.19 by virtue of its heading text (application of GIR 1). This interpretation was accepted by 21 votes to 1 (HSC - 24th Session) and confirmed at the 27th Session (see paragraph 4 above).
8. The issue of how to classify non-electric chafing dishes which have an additional electric element remains to be decided. According to the exporter, the heating element cannot perform the functions listed in the legal text of heading 84.19. The principal function remains the same, regardless of the heat source (maintaining the water at a constant temperature). The HSC decided not to classify non-electric chafing dishes in heading 84.19. As a result, the classification of chafing dishes containing an electrical element in heading 84.19 should also be ruled out.
9. Although the text of heading 85.16 refers to articles "for domestic purposes", the chafing dishes are explicitly mentioned in the French version of the Explanatory Notes to the said heading (Part (E), Item 5 – "bain-marie"). It goes without saying that chafing dishes are probably always intended for use in restaurants, hotels, etc. Hence there is no reason to rule out this heading for classification purposes.
10. Should heading 85.16 be ruled out as a result of a rather restrictive interpretation of the term "for domestic purposes", the only other classification possibility is in heading 85.43 as "Electrical machines and apparatus having individual functions, not specified or included elsewhere in this Chapter".

III. SECRETARIAT COMMENTS

11. In Doc. NC0329E1 (HSC/26), the Secretariat proposed that an “electric chafing dish which can also use other energy sources”, described by the Israeli Administration in paragraph 24 of the above-mentioned document, be classified in subheading 8419.81 by application of GIRs 1 and 6. This opinion was based on the documentation available at the time, which remains on file.
12. This question, which had been on the Agenda for the HSC’s 27th Session, was deferred until the 28th Session for further study. During the intersession the Secretariat received new information from the Swiss Administration, which is set out in paragraphs 3 to 10 above. On the basis of this new information, and the material already on file, the Secretariat believes that the product submitted to the HSC for examination can be described as follows :

Description

Stainless steel chafing dish (model “RONDO 1/1 GN”, No. 2509-697) with roll-top lid. The underside of the apparatus is fitted with a removable, thermostat-controlled heating unit, which is screwed into place and fits directly against the water pan, thus ensuring heat transfer. The food tray, with a lid that opens upwards, may have a diameter of either 50cm or 70cm, depending on the type. Beneath the tray is a pan of hot water to keep the food warm. The apparatus is 66 cm long, 48 cm wide and 40cm high, and can contain up to 14 litres of water. It is used to keep food warm using the “bain-marie” process (the hot water in which the trays of food are standing is kept at a constant temperature using electricity), in establishments where buffet meals are served (especially hotels).

13. When this issue was examined at its 27th Session, the Committee posed the following questions, indicating that it could not rule on this classification issue until these questions were answered :
- (1) whether the presence or absence of electricity could alter the classification of such apparatus
 - (2) whether the heating elements were removable or permanently fixed
 - (3) whether the apparatus, as indicated in paragraph 26 of Doc. NC0329E1, could be used for cooking foodstuffs, and
 - (4) whether the apparatus could be used for domestic purposes.
14. In the light of all the information available, particularly the new information received from the Swiss Administration, and based on the Committee's decision with regard to the non-electric chafing dish, the Secretariat is able to respond to the above questions as follows :
- (1) the presence or absence of electricity can alter the classification,
 - (2) the heating elements are removable,
 - (3) the chafing dish could not be used for cooking foodstuffs,

- (4) the apparatus could be used for “domestic purposes”, based on the broad interpretation given to this expression by the Committee when classifying the non-electric chafing dish.

15. In the light of the new information received, the Secretariat notes that the chafing dish at issue is similar to the one classified by the HSC at its 24th Session, but offers the added advantage of incorporating an electric heating device. Classification in subheading 8419.81, as proposed by the Secretariat at the HSC’s last session, must be ruled out based on the broad interpretation given to the term “domestic” by the Committee in classifying the non-electric chafing dish. Since the electric chafing dish in question is basically the same as the non-electric chafing dish it should also be considered to be of a kind used for domestic purposes and therefore excluded from heading 84.19.
16. The Secretariat wishes to draw the HSC’s attention to the fact that in the Israeli Administration’s letter of 29 May 2000, which is reproduced in paragraphs 15 to 21 of Doc. NC0329E1, it is stated that : “the product at issue is not just very similar to the one that the HSC classified in subheading 7323.93 at its 24th Session, but is indeed the very same product, model “RONDO 1/1 GN”, No. 2509-697, supplied with an electric heating unit”.
17. As this is apparatus which could be used for “domestic purposes”, the Secretariat would be inclined to consider the chafing dish, presented with its electric heating unit, as an electric food warmer classifiable in subheading 8516.79 by application of GIRs 1 and 6. The indications given on page 1471 of the Explanatory Notes, where food warmers are specifically mentioned, would seem to provide some support for this interpretation. However, where the article at issue is presented without the electric heating unit, the Secretariat considers that it is a food warmer classifiable in subheading 7323.93 as decided by the HSC at its 24th Session.

IV. CONCLUSION

18. The Committee is invited to examine the classification of the electric stainless steel chafing dish in the light of the Swiss Administration’s comments in paragraphs 3 to 10 above and the Secretariat comments in paragraphs 11 to 17. The Committee is also invited to indicate what further action, if any, should be taken in respect of this matter.
-