



HARMONIZED SYSTEM
COMMITTEE

-
30th Session
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NC0629E1

O. Eng.

Brussels, 6 September 2002.

POSSIBLE CONTRADICTION BETWEEN THE EXPLANATORY NOTES AND
THE LEGAL TEXT OF HEADING 85.36

(Item VIII.11 on Agenda)

Reference documents :

NC0561E1 (HSC/29)
NC0568B1 (HSC/29)

NC0586E1 (HSC/29)
NC0590E2, Annex IJ/11 (HSC/29 – Report)

I. BACKGROUND

1. On 31 January 2002, the European Community sent a note to the Secretariat pointing out that the EC cannot apply a certain part of the Explanatory Note to heading 85.36, since the Court of Justice of the European Communities had stated that that particular part was contrary to the actual wording of the heading (Doc. NC0561E1 (HSC/29)). Due to lack of time, the Committee agreed to postpone discussions on the note to its next session.
2. On 16 July, the Secretariat received a note from the Canadian Administration indicating that the ruling provided by the EC Court of Justice possibly contradicts a ruling made on the same Explanatory Note by the Canadian International Trade Tribunal. The note is reproduced below. A copy of the ruling of the Canadian International Trade Tribunal will be made available to delegations in the meeting room.

II. NOTE BY THE CANADIAN ADMINISTRATION

3. "I am writing to inform you of a matter that is of considerable importance to the Canadian Administration. It concerns the EC Administration's proposal to amend the interpretation of "junction boxes" in Part (III) (C) of the Explanatory Notes (EN) to heading 85.36. This request originates from a European court decision that possibly contradicts a favourable ruling made on the same EN text by the Canadian International Trade Tribunal. In view of these inconsistent legal rulings we would like to propose a compromise that respects the spirit of both decisions.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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4. The issue is described in WCO Docs. NCO561E1 and NCO561B1, which were not discussed at the recently concluded HSC session because of time constraints¹. In order to comply with a European Court of Justice ruling (Case C-280/97), the EC is seeking a review of the second sentence in Part (III) (C) on page 1688 of the EN (2002 version) on the basis that it contradicts the heading text. This provision describes junction boxes that fall outside the scope of the electrical junction boxes named in heading 85.36 because they are not fitted with the means of electrical connection. Instead, they are classified according to their constituent material.
5. Our understanding of the European court's ruling is that it dealt with the classification of incomplete and unassembled electrical junction boxes under GIR 2 (a). It is further understood that the court interpreted the EN text in question as erroneously excluding these products from classification in heading 85.36. As a result, the second sentence in Part (III) (C) was held to contradict and alter the meaning of the heading text.
6. While there was no issue regarding incomplete or unassembled electrical junction boxes in the case before the Canadian tribunal, it used the interpretation provided in the second sentence of Part (III) (C) as the basis for its decision. In Rittal Systems Ltd v DMNR [AP-99-012] of June 30, 2000, the tribunal ruled that the junction boxes in issue were not classifiable in heading 85.36 as electrical apparatus for making connections to or in electrical circuits. There was no evidence to show that these goods were equipped with terminals or other devices for connecting together those electrical wires that are part of electrical circuits. Instead, they were ruled as protective covers for enclosed connections and classified in heading 73.26, according to their constituent material.
7. The Canadian ruling reaffirms that there are goods known by name or application as "junction boxes" which fall outside the scope of heading 85.36. It supported the position taken by Customs in the Rittal Systems Ltd case which we believe reflects a reasonable interpretation of the legal heading text and corresponding Explanatory Notes. Consequently, we do not support any proposed amendment that seeks to overturn the Canadian tribunal's ruling. You should be aware that legal classification precedents of such nature are normally binding on this administration.
8. After reviewing the background information to the EC Administration's request we believe that a solution is available to the satisfaction of all parties. It would respect the decisions of both the European court and the Canadian tribunal, as follows :

Chapter 85

Explanatory Notes. Page 1688. Heading 85.36. Part (III). Item (C). Last sentence.

Delete and substitute :

"Boxes, including those also known as "junction boxes", not fitted with means of electrical connection or any provision therefor, but used solely as a protective cover or to hold an insulating compound over a joint made independently, are not covered here, but are classified according to their constituent material."

9. The above wording "not fitted with means of electrical connection or any provision therefor" (underlined for emphasis) appears to satisfy the European court's ruling on incomplete and unassembled junction boxes intended to receive electrical terminals. Even though our own interpretation of the current EN text does not exclude goods classifiable on the basis of GIR 2 (a), the additional text should reiterate this point. There is also no impact on the Canadian tribunal's decision."

¹ It was postponed to the November 2002 session

III. SECRETARIAT COMMENTS

10. The ruling of the **Canadian International Trade Tribunal** refers, among other things, to “junction boxes”, being enclosures of iron or steel, to house and protect the components which are needed to make electrical connections, having a connector for a grounding stud, but not equipped with electrical terminals or other devices for connecting together those electrical wires which are part of electrical circuits. The **Canadian International Trade Tribunal** was of the view that this commodity should be classified outside heading 85.36, since it is used solely as a protective cover with respect to the enclosed connections. Taking into account the Explanatory Note to that heading (and in particular the last sentence of item (C) of part (III) of that Explanatory Note), it should be classified according to its constituent material, i.e., steel.
11. The Secretariat understands that the commodity classified by the **Canadian International Trade Tribunal** is slightly different from the one ruled by the **Court of Justice of the European Communities**, which was described in Doc. NC0561E1 (paragraph 12) as follows :
- “[. . .] The article in question is a rectangular container (approximately 21.7 cm long, 8 cm high and 11.7 cm wide) with a lid of coated die-cast aluminium (aluminium/silicon alloy with aluminium content predominant by weight). In the lid, in which a plastic insulation has been inset, there are four steel connecting bolts. The article is intended to receive electrical terminals (series terminals) of various types and dimensions and, in addition to holes for screw connections, it also has holes for fastening. In addition, it has four threaded holes designed for earthing bolts of copper-plated steel. Those bolts are packed loose in the product. There are no other connecting devices.”
12. Having said this, it is to be noted that neither the **EC** nor the **Canadian** Administration requested the Committee’s view on the classification of the products at issue or to give its opinion vis-à-vis the classification rationale. However, both proponents have suggested amending the Explanatory Note to heading 85.36 (see the Annex to Doc. NC0561E1 and paragraph 8 above). In this context and to assist the Committee’s discussion vis-à-vis the scope of heading 85.36, the Secretariat would like to refer to paragraphs 20 to 22 of Doc. NC0561E1, in which two types of junction boxes were reproduced.
13. With respect to the Secretariat comments on the **EC** proposals and its own alternative, to amend the Explanatory Note to heading 85.36, the Secretariat would like to refer to paragraphs 23 to 27 of Doc. NC0561E1, and its Annex.

IV. CONCLUSION

14. The Committee is invited to take into account the observations of the **Canadian** Administration in paragraphs 3 to 9 above and the comments of the Secretariat set out in paragraphs 10 to 13 above, when considering this agenda item.
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