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HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
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(+ Annex)
O. Eng.

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AMENDMENT OF THE EXPLANATORY NOTES TO CLARIFY THE CLASSIFICATION OF
DVD DRIVES, STANDALONE DVD PLAYERS AND GAME PLAYERS

(Item III.A.14 on Agenda)

Reference documents :

NR0258E1 (RSC/25)
NR0265E3, Annex D/14 (RSC/25 – Report)
NC0590E2, Annex H/10 (HSC/29 – Report)

I. BACKGROUND

1. The Sub-Committee at its 25th Session examined a proposal from the **United States** regarding possible amendment of the Explanatory Notes concerning CD drives and DVD drives.
2. After a preliminary discussion, the Sub-Committee agreed that the question should be re-addressed after the HS Committee had concluded its examination of the classification of DVD drives. Administrations interested in the matter were invited to provide further information to the Secretariat.

II. SECRETARIAT COMMENTS

The **US** Proposal

3. The original **US** submission was as follows :

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

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Explanatory Note to heading 84.71, Part (D), paragraph 11 (“Apart from central processing units and input and output units, examples of other units include :”), Item (2)

Insert the following new paragraph after the existing text for item (2) :

“Such storage units include compact disc and digital versatile disc read only memory drives (e.g., CD-ROM, DVD-ROM), recordable drives (e.g., CD-R, DVD-R) and rewritable drives (e.g., CD-RW, DVD-RW). These devices possess a laser, mirror and lens. They are external or internal units designed for use with automatic data processing machines. A read only memory drive reads discs bearing data that cannot be erased or re-recorded. A recordable drive permanently records data on specially treated discs that may be read by a read only memory drive. A rewritable drive is used to read, record, erase and re-record data stored on discs.”

4. At its 17th Session, the Harmonized System Committee classified certain CD-ROM drives as storage units of subheading 8471.70, by application of Notes 5 (B), (C) and (D) to Chapter 84. The decision is reflected in a Classification Opinion approved at the Committee’s 18th Session :

8471.70 1. CD-ROM drives, being storage units for automatic data processing machines which consist of drive-units designed for retrieving signals from CD-ROMs, audio CDs and photo-CDs. They are equipped with a jack for earphones, a volume-control button and a start/stop button.

5. The expression “storage unit” is broad enough to cover devices that both record and read data, such as ZIP drives. Therefore, the CD-R and CD-RW drives are also classifiable as storage units of subheading 8471.70.
6. CD-R and CD-RW drives are popular peripherals designed for connection with computers by means of a USB, serial or other interface. It is anticipated that they will eventually replace CD-ROM drives as standard equipment for computers. In view of their importance in international trade, we propose an amendment to the Explanatory Notes in order to clarify the classification of CD-ROM, CD-R and CD-RW drives in the Harmonized System...”

RSC/25

7. At the 25th Session of the Sub-Committee, the Delegate of **Canada** felt that the proposal either needed more detail or should be further simplified, noting that his administration would possibly send an alternative text for the next session of the Sub-Committee.
8. The **EC** Delegate agreed with the Secretariat that it would be appropriate to wait for final classification decisions (on DVD drives, standalone DVD players and the “PS2”) from the HS Committee before considering the text submitted by the **US** in detail, particularly in respect of the products to be excluded from heading 84.71.

9. In response to the questions posed by the **EC** Delegate, the Delegate of the **US** explained that the rationale for the proposal was simply to carry a Classification Opinion (8471.70/1 CD-ROM drives) forward into the Explanatory Notes as an example of storage units covered by heading 84.71. Type “R” and “RW” drives were also good examples of such storage units.

Conclusions of the HSC/29 on the classification of DVD drives, standalone DVD players and the “PlayStation® 2”

10. At its 29th Session, the HS Committee :
- (a) unanimously classified DVD drives in subheading 8471.70 and standalone DVD players in subheading 8521.90;
 - (b) by 39 votes to 5, classified the “**Sony PS2**” in subheading 9504.10;
 - (c) instructed the Secretariat to draft amendments to the Explanatory Notes relevant to the classification of DVD products referred to in (a) and (b) above and to consider whether or not there was a contradiction between the legal texts and exclusion (b) in the Explanatory Note to heading 95.04 and whether it would be possible to clarify the text of that exclusion (page 1917); and
 - (d) agreed that the draft texts should be submitted to the next session of the Review Sub-Committee (see Annex H/10 to Doc. NC0590E1).

Secretariat’s views

11. As regards the possible alternative proposal from the **Canadian** administration, the Secretariat has not received any further proposals or information from administrations by the time of the preparation of this document. Any submission before the session will be presented to the Sub-Committee in an additional document.
12. Since the amendments concerned are now based not only on the proposal made by the **US** but also on the reflection of the HS Committee’s classification decisions (i.e., Article 8 Procedure), there should be no need to obtain any data on the trade volume of the products concerned, notwithstanding the fact, to the Secretariat’s view, that the world trade in these products is considerably high.
13. Concerning the text proposed by the **US** :
- (a) in the first line, abbreviations “(CD)” and “(DVD)” could be inserted after “compact disc” and “digital versatile disc”, respectively;
 - (b) for simplification purposes, the references to “read only memory”, “recordable” and “rewritable” could be deleted from the first and second lines to avoid repetition. Nevertheless, it would be wise to insert the expression “exclusively used in conjunction with automatic data processing machines” in the second line, since such drives are controlled by ADP machines as storage units;
 - (c) the reference to “a laser, mirror and lens” as components of CD and DVD drives in the third line could be deleted, since these components are not included in the language of

the present Classification Opinion 8471.70/1 nor were they considered by the HS Committee when it classified the DVD drives;

- (d) the Secretariat agrees with the United States that CD-Recordable and CD-Rewritable drives are gradually replacing CD-ROM drives as standard additional storage equipment for ADP machines. Also, the use of DVD drives is getting more and more widespread around the world. It should be noted that the HS Committee at its 29th Session classified not only DVD-ROM drives but also DVD-Recordable and DVD-Rewritable drives in heading 84.71 unanimously.

14. Concerning the DVD products to be excluded from heading 84.71, it should be noted that the HS Committee classified “standalone DVD players” in heading 85.21 and the “PS2” in heading 95.04. These products should be subjected to an exclusion note in the Explanatory Note to heading 84.71.
15. As to the possible contradiction between the legal texts and exclusion (b) in the Explanatory Note to heading 95.04, the attention of the Sub-Committee is drawn to paragraph 4 of Annex H/10 to Doc. NC0590E2 (HSC/29 – Report). Many delegates in the HS Committee were of the view that the “PS2” was a sophisticated versatile device, capable of performing the functions of an ADP machine (heading 84.71), sound reproducing apparatus (heading 85.19), video reproducing apparatus (heading 85.21) and video game player (heading 95.04). Nevertheless, any machine having the capability of “being freely programmed” or “processing data” should not automatically be regarded as being solely or principally an ADP machine within the meaning of the Harmonized System. The “PS2” was advertised, marketed, imported and presented for retail sale as a video game player in a box containing a console, a game controller and connection cables and was designed to be used with a television receiver. As such, the HS Committee classified the “PS2” in heading 95.04 by application of GIR 1 (Note 1 (p) to Section XVI).
16. Exclusion (b) of the Explanatory Note to heading 95.04 states that this heading excludes “machines and apparatus fulfilling the conditions of Note 5 (A) to Chapter 84, whether or not capable of being programmed for video games (**heading 84.71**).
17. The Secretariat is of the view that, considering the present provisions, there is no contradiction between the legal texts and exclusion (b) of the Explanatory Note to heading 95.04. Once a machine or apparatus (e.g., the “PS2”) is excluded from Section XVI by application of Note 1 thereto, it should be classified elsewhere in the Nomenclature. Exclusion (b) of the Explanatory Note to heading 95.04 can be taken into account, if the classification of the machine or apparatus concerned in heading 95.04 is in dispute under the terms of this heading and other relative legal notes. By way of example, the said exclusion (b) should be applicable not to “video games of a kind used with a television receiver” but to, e.g., “portable digital ADP machines” that fulfill the conditions of Note 5 (A) to Chapter 84 and are designed, advertised, marketed, imported and presented for retail sale as ADP machines, though they are capable of being programmed for video games. Such machines, under the guidance given by the language of exclusion (b) of the Explanatory Note to heading 95.04, may be excluded from heading 95.04 and be included in heading 84.71 by application of the legal texts.
18. On the basis of the foregoing, the Secretariat has prepared and appended hereto two alternative draft amendments to the Explanatory Notes (US and Secretariat proposals) for examination by the Sub-Committee as instructed by the HS Committee at its 29th Session.

III. CONCLUSION

19. Taking into account the above information, the Sub-Committee is invited to express its views on the alternative draft amendments to the Explanatory Notes presented in the annex to this document.

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