



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
21<sup>st</sup> Session  
-

NR0084E1

O. Eng.

H3-1

Brussels, .

AMENDMENT OF THE EXPLANATORY NOTES CONCERNING

NEW NOTE 6 TO CHAPTER 85

(Item II.A.11 on Agenda)

Reference documents :

42.100, Annex H/13, paragraph 7 (HSC/21 – Report)  
NR0072E1, Annex C, paragraphs 90 and 91 (RSC/20 - Report)  
NC104E1, paragraph 72 (HSC/24)

I. BACKGROUND

1. At its 20<sup>th</sup> Session, the Review Sub-Committee examined new Note 6 to Chapter 85. The US Delegate stated that the intent of Note 6, as amended, should be explained because under the amended text it only applied when the media was presented with the apparatus for which it was intended (whereas under the existing text Note 6 always applied each time such media was imported). An Explanatory Note to new Note 6 was needed to explain what was intended by the words "when presented with the apparatus for which they are intended". The delegate further stated that consequential amendments would also be needed for the Explanatory Notes to headings 85.23 (page 1485) and 85.24 (page 1487) dealing with this matter. The Sub-Committee agreed that new Note 6 should be explained in the Explanatory Notes. The Sub-Committee also considered adding the phrase "in accordance with Note 6 to Chapter 85" to the last paragraph of the Explanatory Notes to headings 85.23 and 85.24. It agreed to give further consideration to this issue at its next session.

II. COMMENTS BY THE US ADMINISTRATION

2. "The United States submits the following comments regarding the draft Explanatory Note to Chapter 85 and Note 6 to that Chapter. These comments relate to the Review Sub-Committee's consideration of possible changes to the Explanatory Notes consequential upon the Article 16 Recommendation of 25 June 1999.

At its 21<sup>st</sup> session, the Harmonized System Committee considered the possible amendment of Note 6 to Chapter 85 (see Annex H/13 to Doc. 42.100). The Committee finally agreed that in the future Note 6 should specify that the media of headings 85.23 and

File No. 2152

85.24 are to be classified separately only when imported with the apparatus for which they are intended. When media are presented with merchandise other than the apparatus for which they are intended, the media should be classified with the merchandise if together they make up a set put up for retail sale. The media should be classified separately, however, if the merchandise does not make up a set. The legal text to Note 6 to Chapter 85 was amended to reflect this decision, and the following amendment is included as part of the Article 16 Recommendation of 25 June 1999:

*Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented with the apparatus for which they are intended.*

*This Note does not apply to such media when they are presented with articles other than the apparatus for which they are intended.*

3. In the interest of providing guidance as to the proper interpretation of Note 6, as amended, the United States proposes the following amendments to the Explanatory Notes to Chapter 85 :

Page1443. Chapter 85. New Item (C).

Add the following new Item (C) :

“(C) MEDIA PRESENTED WITH APPARATUS  
FOR WHICH THEY ARE INTENDED

(Chapter Note 6)

Records, tapes and other media of heading 85.23 or 85.24 remain classified in those headings when presented together with the apparatus for which they are intended (e.g., a video cassette presented with a video cassette player). This Note does not apply, however, when the media are presented together with articles other than the apparatus for which they are intended (e.g., materials for use in instructing children in mathematics consisting of an instructional video cassette, an instructional workbook and a small calculating machine). When the media are presented with articles other than the apparatus for which they are intended, the following classification principles should be applied :

- (1) If the media and the other articles make up a set put up for retail sale, the set should be classified by application of General Interpretative Rule 3 (b); or
- (2) If the media and the other articles do not make up a set put up for retail sale, the media should be classified separately.”

Page 1485. Heading 85.23. Second full paragraph.

Delete and substitute :

“Unrecorded media for sound recording or similar recording presented separately or together with the apparatus for which they are intended or assembled with constituent parts of machines of headings 84.69 to 84.72 (e.g., disc packs) are to be classified in this heading (See Item (C) to the General Explanatory Note to this Chapter).”

Page 1487. Heading 85.24. First full paragraph.

Delete and substitute :

“Media recorded with sound or similar recording presented separately or together with the apparatus for which they are intended or assembled with constituents parts of machines of subheadings 84.69 to 84.72 (e.g., disc packs) are to be classified in this heading (See Item (C) to the General Explanatory Note to this Chapter).”

### III. SECRETARIAT COMMENTS

4. The Secretariat can accept the proposals made by the US Administration, as they reflect the points agreed upon by the Committee at its 21<sup>st</sup> Session for the future classification of media when presented with merchandise other than the apparatus for which they are intended. The Secretariat can also accept the addition of the reference “(See Item (C) to the General Explanatory Note to this Chapter)” to the Explanatory Notes to headings 85.23 and 85.24. This reflects the proposal to add the phrase “in accordance with Note 6 to Chapter 85” to the last paragraph of the Explanatory Notes to headings 85.23 and 85.24. The Secretariat would draw the Sub-Committee’s attention to the fact that the Sub-Committee agreed to give further consideration to this proposal.

### IV. CONCLUSION

5. The Sub-Committee is invited to take account of the Note from the US Administration and the above Secretariat comments when it examines this agenda item.
-