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REVIEW SUB-COMMITTEE

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DRAFT AMENDMENTS TO THE NOMENCLATURE TO CLARIFY
THE CLASSIFICATION OF RECORDED MEDIA

(Item II.A.6 on Agenda)

Reference documents :

40.264 (HSC/17)	41.600, Annex D, paragraph 73 (HSC/20 – Report)
40.260, Annex IJ/28 (HSC/17- Report)	41.794 (RSC/17)
40.600, Annex IJ/7 (HSC/18 - Report)	41.920, Annex A/14 (RSC/17 – Report)
40.785 (RSC/15)	42.019, paragraphs 36 to 38 (HSC/21)
40.920, Annex B/10 (RSC/15 - Report)	42.100, Annex F/1, paragraph 42 (HSC/21 – Report)
	42.225 (RSC/18)
40.881, paragraphs 60 and 61 (HSC/19)	42.246 (RSC/18)
41.100, Annex E/1, paragraphs 52 and 53, and Annex H/2 (HSC/19 - Report)	
41.165 (RSC/16)	42.500, Annex A/8 (RSC/18 – Report)
41.472 (RSC/16)	42.406, paragraph 15 (HSC/22)
41.582 (RSC/16)	42.750, Annex E, paragraph 16 (HSC/22 – Report)
41.580, Annex B/12 (RSC/16 - Report)	NR0007 (RSC/19)
41.341, paragraph 57 (HSC/20)	

I. BACKGROUND

1. On 13 January 1999 after Doc. NR0007 had been prepared, the Secretariat received the following Note from the Canadian Administration concerning possible amendments to the Nomenclature to clarify the classification of recorded media.

File No. 2679

II. NOTE FROM CANADA

2. "With respect to your letter on amendments to the subheadings under heading 85.24 and a definition of the term "software", prior to the 18th Session of the Harmonized System Review Sub-Committee in September 1998, the Canadian Administration provided the Committee with a proposal for amending the subheadings under heading 85.24, as well as providing a definition for the term "software" which could be made into a Legal Note.
3. Canada's proposal was designed to provide clear and concise breakouts for the subheadings under heading 85.24 and to provide a definition for the term "software" in a Legal Note. The text provided is as follows :

85.24 - Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records but excluding products of Chapter 37

- Discs for laser reading systems :

- 8524.31 -- Software
- 8524.32 -- Digital audio discs
- 8524.39 -- Other

8524.40 - Magnetic tape software

- Other
- 8524.91 -- Software
- 8524.99 -- Other

Legal Notes :

4. For the purpose of heading 85.24, the term "software" means programs or data that are recorded on diskette, compact disc, magnetic tape or any other suitable storage medium, which are designed to be executed or processed by a computer or similar programmable microprocessor-controlled device or apparatus. The term "software" does not include audio recordings of the type used with sound recording or reproducing apparatus of heading 85.19 or 85.20, or video recordings of the type used with video recording or reproducing apparatus of heading 85.21.
5. In the Canadian Administration's opinion, the wording proposed by the Secretariat for the subheading breakouts, modeled on the Information Technology Agreement (ITA) lacks clarity and is overly complex. The Canadian Administration believes that the phrasing "For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form...", as it would appear in subheadings 8524.31, 8524.40 and 8524.91 refers to "software" and it would be more appropriate to simply indicate "software" rather than the text used in the ITA. The proposed text is the Canadian Administration's recommended wording for these breakouts and it would welcome suggestions to improve the text.

6. Several questions were raised with respect to Canada's proposal which the Canadian Administration would like to take this opportunity to address. Firstly, Canada's definition of "software" is intended to encompass all programmable microprocessor-based devices and "software" should not be restricted to automatic data processing (ADP) machines of heading 84.71.
7. In Canada's opinion, "software" for a private automatic branch exchange (PABX) telephone switching apparatus of heading 85.17 or for a video game of heading 95.04 should be classified or treated in the same manner as "software" for an ADP machine. "Software" is the set of programs, instructions, rules and procedures concerned with the operation of a computer or programmable microprocessor-controlled device or apparatus. The word "programmable" is used to indicate that any microprocessor-based machine which is capable of executing a "software" program would have to be programmable.
8. The second question relates to the use of the term "digital audio discs" and the fact that the Secretariat's proposal was to retain the status quo for subheading 8524.32 which currently provides for discs "For reproducing sound only". The goods intended to be covered by this subheading are in fact "digital audio discs". This is much clearer than simply referring to them as discs "For reproducing sound only". If the current wording is retained, there is the possibility of an overlap between those products that would fall under subheading 8524.31 and subheading 8524.32. Audio discs of subheading 8524.32 could fall within the scope of the proposed provisions for subheading 8524.31 in that this subheading covers discs "For reproducing representations of ...sound, by means of an ADP machine". While there may be a specific breakout for discs "For reproducing sound only", these audio discs can in fact be used in both "compact disc players" and in an ADP machine equipped with a CD-ROM drive. The definition the Canadian Administration proposed for "software" would preclude these discs from being classified under subheading 8524.31. A secondary issue that arises with retaining the current wording of subheading 8524.32 relates to "enhanced digital audio discs". In addition to the audio data, these discs contain video and text data which can only be accessed if the discs are used in a multimedia ADP machine with a CD-ROM drive. These discs have the essential character of digital audio discs and in the Canadian Administration's opinion the audio function of the discs provides its essential character. The Canadian Administration believes these discs should be classified under subheading 8524.32. The video and text data are purely ancillary to the main function of the digital audio disc. Given the current text of this subheading, a strict, literal interpretation of this subheading would preclude classification under this subheading. Rather than referring to these discs as "compact discs", "compact digital audio discs" or "audio CDs", the Canadian Administration recommended the use of "digital audio discs". Given the pace of advancements in technology, the use of the word "compact" may limit the scope of the subheading in the future. There is no guarantee that all "digital audio discs" will be of the "compact" variety in the future and this may not be the case even in today's market."

III. SECRETARIAT COMMENTS

9. In paragraph 4 of Doc. NR0007, the Secretariat points out that if it is not vital to align the HS terminology on the descriptions to be adopted by the Information Technology Agreement (ITA), the Canadian Administration's proposals could be acceptable.

IV. CONCLUSION

10. The Sub-Committee is invited to take account of the Canadian Administration's above additional comments when examining this Agenda item.
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