



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0329E1

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26th Session
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O. fr.

Brussels, 2 août 2002.

PROPOSAL BY THE US ADMINISTRATION TO MERGE
HEADING 95.01 TO 95.03 INTO A SINGLE HEADING FOR TOYS

(Item III.A.21 on Agenda)

Reference documents :

NR0222E1 (RSC/25)
NR00265E3, Annex C/17 (RSC/25 – Report)
NR0291E1 (RSC/26)

I. BACKGROUND

1. At its 25th Session, the Sub-Committee agreed in principle on the merging of headings 95.01 to 95.03 into a single heading for toys and agreed to continue its discussion of related matters, on the basis of additional information to be supplied by administrations and, in particular, the US Administration.
2. After the publication of Doc. NR0291E1, on 15 July 2002 the Secretariat received the following note from the US Administration.

II. FURTHER COMMENTS FROM THE US ADMINISTRATION
REGARDING ITS PROPOSED MODIFICATIONS TO CHAPTER 95

3. "During its 25th Session, the Review Sub-Committee agreed that headings 95.01 through 95.03 should be combined into a single heading with no subdivisions (see Doc. NR0265E3, Annex C/17). The remaining issues to be decided by the Sub-Committee are (1) the exact legal text for the new heading and (2) the Chapter Note proposed by the United States."

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New heading text

4. The Sub-Committee entertained proposals from the floor to modify the text proposed by the **United States** for the new heading. The text, as amended during RSC/25, is as follows :

"95.xx -- Tricycles, scooters, pedal cars and other similar wheeled toys; dolls' carriages, dolls; other toys not elsewhere specified or included; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds."
5. For the most part, the ideas raised during the meeting were constructive. We suggest inserting "designed to be ridden by children" after the reference to wheeled toys. This would maintain the scope of the heading by clarifying that adult versions of such articles are not in Chapter 95.
6. We are concerned that the introduction of "not elsewhere specified or included" (n.e.s.o.i.) would radically reduce the scope of the new provision. The n.e.s.o.i. designation must always be used with care in the Nomenclature, since it changes the intended heading coverage, making the heading inferior to any other heading that could possibly cover the intended products. For example, adding n.e.s.o.i. status to the new heading would probably cause toy clocks to move from Chapter 95 to Chapter 91. Certain Chapters already have Legal Notes excluding toys of Chapter 95, -- e.g., Chapter 84 Note 1(p) and Chapter 92 Note 1(c). However, many other Chapters, such as Chapters 85 and 91, do not contain such an exclusion and would therefore be likely destinations for product shifts.
7. For our part, the addition of n.e.s.o.i. to the draft heading text does not serve a useful purpose. Since it is not currently in any of the three headings being consolidated, and since it would result in uncertain product transfers, we feel that it should not be in the new heading. The expression, "other toys, not elsewhere specified or included" should be replaced by, "other toys". It also should be moved to the end of the heading text, because it should not be necessary to consider whether the named recreational models and puzzles are in fact toys.
8. The text of the heading should read as follows :

"95.xx – Tricycles, scooters, pedal cars, and other similar wheeled toys designed to be ridden by children; dolls' carriages; dolls; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; other toys."

Proposed new Chapter Note

9. Our intent in proposing the new Chapter Note was to simplify classification in the Harmonized System by clarifying the scope of Chapter 95. It is our understanding that classification of toys and toy sets is not consistent and we proposed the note in order to make classification more uniform and predictable. The note expresses our understanding of the intent of the framers of the Harmonized System that products clearly designed, traded and marketed as toys be classified in Chapter 95. From the interventions of many administrations during the 25th Session of the Sub-Committee, it seems apparent to us that our proposed legal note will not affect classification by most Customs administrations.

10. After the Sub-Committee's discussion, it became clear to us that there are actually three kinds of classification issues that we are trying to clarify :
- distinguishing between toy versions of articles like sewing machines and microscopes and full-featured "adult" versions of the articles;
 - classification of instructional or toy sets of chemicals, sewing apparatus, and the like, in which individual components taken separately may not be each recognisable as toys;
 - classification of collections of articles in which a non-toy article of minor value is included with a toy or toys for promotional, advertising or other marketing purposes.
11. It became clear to us that trying to cover all three situations in two paragraphs resulted in a note that could be difficult to translate and to administer. We therefore offer a revised proposal, which handles each of the above mentioned situations separately. Most of the language is taken from the current Explanatory Note to heading 95.03, and we are proposing to elevate it to the status of a legal note to ensure that it is consistently applied.
12. The revised **US** proposal for the new Chapter 95 note is :
- "3. Subject to the provisions of Note 1 above, heading 95.xx applies, *inter alia*, to :
- (a) certain toys that may be capable of limited use, but are distinguishable as toys by their size or limited capacity (e.g., toy musical instruments, sewing machines, tools, sports equipment);
 - (b) collections of articles, of which one or more items, if presented separately, would be classified in other headings, provided such collections, as put up for retail sale, are clearly intended for use as toys (e.g., instructional toys such as chemistry or sewing sets);
 - (c) articles of this heading combined with one or more items of minor importance which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys (e.g., dolls put up with a child's hairbrush, hair band or jewellery)."
13. Proposed Chapter Note 3(a) would specify that product size and limited capacity can define a product's identity as a toy, thereby avoiding the necessity of resorting to GRI 3 in such obvious situations.
14. Proposed Note 3(b) assures that instructional sets and similar sets may be classifiable as toys even though they consist largely of non-toy articles. In such sets, it is clear from the size of the components, the specific nature of the collections (and the inclusion of instructional booklets) or the educational nature of the collection, that these articles are for the amusement of children.
15. Proposed Note 3(c) would prevent the awkward situation in which the presence of an inexpensive promotional article in a toy set might be construed as not meeting a particular need or involved in carrying out a specific activity and therefore classification as a set under GIR 3(b) is not assured. The effect of our proposed Note 3(b) would eliminate this confusion or inconsistent treatment by Customs officials where an incidental item was construed so as to exempt the collection from meeting the sets criteria as described in the Explanatory Note to GIR 3(b)."

III. SECRETARIAT COMMENTS

16. Due to its recent arrival, the Secretariat has reproduced the **US** note without comment.

IV. CONCLUSION

17. The Sub-Committee is invited to take account of the above comments from the **US** Administration when it examines this agenda item.
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