



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
27th Session
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NR0351E1
(+ Annex)

O. Fr.

Brussels, 12 February 2003.

PROPOSAL BY THE US ADMINISTRATION TO MERGE
HEADINGS 95.01 TO 95.03 INTO A SINGLE HEADING FOR TOYS
(Item III.A.12 on Agenda)

Reference documents :

NR0222E1 (RSC/25)
NR0265E3, Annex C/17 (RSC/25 – Report)

NR0291E1 (RSC/26)
NR0332E3, Annex F/12 (RSC/26 – Report)

I. BACKGROUND

1. At its 26th Session, the Sub-Committee decided to place in square brackets the latest version of the proposal by the US Administration aimed at merging headings 95.01 to 95.03 into a single heading, in order to allow time for additional enquiries and comments from administrations during the intersession. At the same time, the Sub-Committee unanimously confirmed that it was not its intention to change the scope of the combined headings.
2. During the discussions on this agenda item, several delegates expressed the view that the term “children” was difficult to define and that its use would further complicate the classification of goods in the Harmonized System. They added that the wording proposed might conflict with the decisions taken by the HSC at its 29th and 30th Sessions in respect of the classification of scooters.
3. Following this discussion, the US Delegate suggested that the words “designed to be ridden by children”, which were present in the existing text of heading 95.01, be retained in the four-digit heading text as this would make it possible to distinguish the articles of this heading from those intended for adults. For similar reasons, he suggested that the words “not elsewhere specified or included” be deleted since, in his view, they might create problems of interpretation or even broaden the scope of the heading; finally, he suggested that the reference to “toys” be moved to the end of the heading text.

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4. One delegate suggested to the Sub-Committee that the word “recreational” be deleted on the grounds that it might pose problems of interpretation.
5. With regard to proposed new Note 3, several delegates voiced the view that it would simplify classification in the Harmonized System and would be consistent with normal practice in the industry. They considered that although the references in the proposed new Note already existed in the Explanatory Notes, it would be appropriate to set them down in the legal Notes given their importance and the role they could play in the classification of toys.
6. During the intersession, the Secretariat received the following note from the **Canadian** Administration with regard to this issue reproduced below.

II. NOTE BY CANADA

7. “The **Canadian** Administration proposes that the following amendments be made to the heading text reproduced at Annex F/12 to Doc. NR0332B2 :
 - Delete the words in the first set of square brackets, i.e., “designed to be ridden by children”. In practice, it is impossible to define the term “children”. It will be recalled that when the classification of scooters designed to be ridden both by children and by adults was examined at a recent HSC session, this term gave rise to a large amount of discussion. Where “toys” are concerned, it is generally accepted that the decisive factor is whether the articles concerned are designed to amuse/entertain the user, regardless of whether that person is a child, a teenager or even an adult.
 - Delete the words in the second set of square brackets, namely “not elsewhere specified or included”. In **Canada**’s view, there is no need to complicate the legal text by including this expression. When considering whether an article is indeed a “toy”, the application of draft legal Note 3 to Chapter 95, at Annex F/12, will make it possible to determine whether the article concerned should fall in the combined heading (heading 95.03). In addition, legal Note 2 (jewellery-type articles) and legal Note 4 (pet toys) are relevant in this respect.
8. After examining these matters, **Canada** also takes the view that legal Notes 3 (a), (b) and (c) proposed by the **United States** will add an element of certainty where the classification of toys in this combined heading is concerned. The **Canadian** Administration does not consider that these notes are in any way likely to pose a problem vis-à-vis the classification principles laid down in General Notes 3 (a) and 3 (b). The only amendment we would suggest concerns Note 3 (a), in which the example “sports equipment” should be deleted. This point is in fact already covered in the introductory text in Part (B) on page 1919 of the Explanatory Notes to heading 95.06.
9. The last observation which **Canada** wishes to make concerns the Explanatory Notes to present headings 95.01, 95.02 and 95.03. The **Canadian** Administration is convinced that the basic scope of these notes must be preserved in order to support the combined heading (95.03) once it comes into effect”.

III. SECRETARIAT COMMENTS

10. The Secretariat continues to hold the view that the **US** proposal will serve to simplify the classification of toys and will not change the scope of present headings 95.01 to 95.03; in addition, it will bring the Harmonized System into line with the normal practices of the industry.
11. In order to help the Sub-Committee finalise this matter, the Secretariat has reproduced in the Annex to this document the text which the Sub-Committee had agreed upon at its 26th Session. As suggested in Doc. NR0291E1, the Secretariat proposes to use the code number 9503.00 – which has never been used before. Numbering the new heading in this way will have no repercussions on the collection of trade statistics.

IV. CONCLUSION

12. The Sub-Committee is invited to examine the texts reproduced in the Annex to this document, taking into account the discussions held at the Sub-Committee's last session as well as **Canada**'s observations and the Secretariat comments set out above.

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