



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0295E1

-
26th Session
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O. Eng.

Brussels, 9 July 2002.

COMPREHENSIVE REVIEW OF THE EXPLANATORY NOTES

POSSIBLE DELETION OF CERTAIN REFERENCES TO "WHALES"

IN THE EXPLANATORY NOTES

(Item III.C.1 on Agenda)

Reference documents :

NR0235E1 (RSC/25)
NR0265E3, Annex E/1 (RSC/25 – Report)

I. BACKGROUND

1. At its 25th Session, the Review Sub-Committee held a discussion on the possible deletion of the references to "whales" from the relevant parts of the Explanatory Notes within the context of the general review of the HS Explanatory Notes.
2. The Chairman began the discussion of this issue by asking the Sub-Committee to give its guidance as to the future direction on this issue.
3. The Delegate of Norway indicated that in her administration's view the working document gave a somewhat misleading interpretation of the facts concerning the ban on international commercial trade in whales and whale products. She noted that Norway had entered a reservation against the moratorium on whaling in accordance with the relevant provisions of the International Whaling Convention (IWC) and therefore there was no general ban against whaling. With regard to the CITES, Norway had entered a reservation against some species of whales mentioned in Appendix I to the CITES and they were treated in Norway as if they were mentioned in Appendix II to the CITES. Therefore, these products could be traded under the CITES controls. Given these facts, the Delegate of Norway

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favoured the status quo with regard to the possible amendment of the HS Explanatory Notes concerning references to whales and whale products.

4. Supporting her view, the Delegate of Japan pointed out that not all of the species of whales and whale products were prohibited from trade by the CITES or the IWC and, therefore, disagreed with the proposal to amend the Explanatory Notes and favoured the status quo.
5. Another delegate agreed with the Secretariat's view that although the references to whale and whale products in the Explanatory Notes having corresponding references in the legal texts should be retained, the references to whale products in the Explanatory Notes without corresponding references in the legal texts could be reviewed in terms of the volume of trade in such products. In this context, certain delegates pointed out that the Explanatory Notes contained references to narcotics, for example, for monitoring purposes regardless of their volume of trade.
6. Finally, the Sub-Committee agreed to re-examine this issue at its next session on the basis of a document to be prepared by the Secretariat which would include trade information and a bilingual annex setting out possible amendments for the consideration of the Sub-Committee (see Annex E/1 to Doc. NR0265E2).

II. SECRETARIAT COMMENTS

7. The Secretariat has studied all the references to whales and whale products in the Explanatory Notes and considers that these references (a total of 12) can be categorised into the following three types, taking into account their nature :

Type I : References to whales or whale products in the Explanatory Notes having corresponding references in the legal texts.

Type II : References to whales or whale products in the Explanatory Notes defining the scope of the corresponding headings; although such references do not have corresponding references in the legal texts.

Type III : Other.

These are summarised in Annex I to this document.

Type I (6 references)

8. As the Secretariat has already mentioned in paragraph 5 of Doc. NR0235E1, if references to whales or whale products in the Explanatory Notes relate to products mentioned in the corresponding legal texts, these references should be retained. This view was supported by certain delegates and no objections to this view were raised at the last session (Annex E/1, paragraph 4 to Doc. NR0265E2). Therefore, the Secretariat has not proposed any draft amendments to the Explanatory Notes in this regard.

Type II (4 references)

9. The Secretariat proposed to delete the reference to whale products covered by this category in Doc. NR0235E1 (see paragraph 4). However, as mentioned in paragraphs 5 and 6 above, certain delegates expressed concerns about the deletion of the references to whales and whale products. The Secretariat will leave this question to the Sub-Committee to decide.

Type III (2 references)

10. Certain whale products mentioned in the Explanatory Notes are used as materials in the manufacture of the products mentioned in the corresponding legal texts; for example, heading 62.12 covers corsets and corset belts, and whalebones are used to reinforce them in the same manner as flexible metallic or plastic stays. Therefore, the Secretariat is of the view that the references to whale products in the Explanatory Notes do not define the scope of the product mentioned in the corresponding headings directly.
11. The Secretariat feels that the use of whalebones is obsolete with regard to the products mentioned in headings 62.12 and 96.03. However, with respect to heading 62.12, the Secretariat notes that the amendment of the Explanatory Note to heading 62.12, page 1079, should be made in the English version only since the words "articles baleinés" in the French version is a generic term and corresponds not only to whalebone but also to flexible metallic and plastic stays.
12. Although noting that the use of whalebones is obsolete, the Secretariat could not obtain relevant information from technical literature or the Internet. Trade data is also unavailable. The Secretariat would therefore also leave this question to the Sub-Committee to decide.
13. Draft amendments to the Explanatory Notes covering the above-mentioned Type II and III references are reproduced in Annex II to this document.

III. CONCLUSION

14. Taking into account the Secretariat comments above, the Review Sub-Committee is invited to consider the draft amendments to the Explanatory Notes set out in Annex II.

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LIST OF REFERENCES TO "WHALE" AND WHALE PRODUCTS IN THE EN

| Heading | EN | Commodity reference | Type | Annex II |
|---------|-----------|--|----------|----------|
| 01.06 | Page 12 | Living animals | Type I | NO |
| 02.08 | Page 20 | Meat and meat offal of the animals | Type I | NO |
| 05.07 | Page 45 | Whalebone and whalebone hair | Type I | NO |
| 05.10 | Page 46 | Ambergris | Type I | NO |
| 15.04 | Page 122 | Fats and oils and other fraction of marine mammals | Type II | YES (*) |
| 15.21 | Page 137 | Spermaceti | Type I | NO |
| 15.22 | Page 137 | Degras (whale oils) | Type II | YES |
| 25.30 | Page 228 | Mineral substances not elsewhere specified or included | Type I | NO |
| 62.12 | Page 1079 | Corsets or corset-belts (whalebones) | Type III | YES |
| 89.02 | Page 1758 | Fishing vessels, factory ships | Type II | YES |
| 96.01 | Page 1924 | Worked bone | Type II | YES |
| 96.03 | Page 1930 | Brooms, brushes (whalebones) | Type III | YES |

Note

"YES" in the "Annex II" column indicates that draft amendments to the Explanatory Notes are available in Annex II to this document.

- (*) There is a reference to "whales" in the first paragraph of the Explanatory Note to heading 15.04. However, it does not appear in Annex II to this document since as the Secretariat stated in paragraph 4 of Doc. NR0235E1, it should be retained as an example of "marine mammals".

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