



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
28<sup>th</sup> Session  
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NR0420E1  
(+ Annex)

O. Eng.

Brussels, 15 July 2003.

POSSIBLE AMENDMENT OF NOTE 5 TO SECTION XVI

(SECRETARIAT PROPOSAL)

(Item III.A.22 on Agenda)

Reference documents :

NR0323E1 (RSC/26)  
NR0334E1 (RSC/WG/1)

NR0400E3, Annex G (RSC/27 – Report)

I. BACKGROUND

1. In the context of the review of Chapters 84, 85 and 90, the **EC** had proposed to widen the scope of current Notes 3 and 4 to Section XVI to include references to Sections XVIII and XX and to adapt current Note 5 to Section XVI on the proposed scope of these Notes (see the Annex to Doc. NR0323E1). The Secretariat, in its synthesis, had some reservations vis-à-vis this idea, given the fact that the concept of “function”, which is a vital element in these Notes, was apparent in the headings of Chapters 84 and 85, and to a certain degree in Chapter 90, but less obvious in the other Chapters of Section XVIII (i.e., Chapters 91 and 92) or XX (i.e., Chapters 94 to 96).
2. Bearing in mind the reservations of the Secretariat referred to above, parties participating in the Informal Working Group on restructuring Section XVI, which was held from 12 to 14 May 2003, requested the Secretariat to study the possible amendment of Note 5 to Section XVI with a view to extending the scope of Notes 3, 4 and 5 to Section XVI to also cover goods of Chapters 90, 91 and 95.

II. SECRETARIAT COMMENTS

3. Following the discussions in the informal Working Group, the Secretariat has prepared a draft amendment to the Nomenclature with a view to extending the scope of Notes 3, 4 and 5 to Section XVI to also cover goods of Chapters 90, 91 and 95. The draft text is reproduced in the Annex to this document.
4. The proposed amendment calls for the following comments.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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5. The main aim of the proposal is to provide for the classification of combinations of machines of Section XVI with machines, etc. covered by the headings of Chapters 90, 91 and 95, on the basis of the provisions of Notes 3 and 4 to Section XVI, which concern the classification of composite machines and other machines designed to perform two or more complementary or alternative functions, and the classification of machines consisting of individual components intended to contribute together to a clearly defined function, respectively. Since the term “machines” also occurs in Notes 1 and 2 to that Section, the Secretariat suggests adding a separate paragraph to current Note 5 to Section XVI, thus avoiding any possible confusion vis-à-vis the scope of the proposed provision.
6. The Secretariat has also included a clause to the effect that the articles of Chapters 90,, 91 and 95 should be presented with one or more of the machines of Section XVI, thus avoiding the possible application of Notes 3 and 4 to Section XVI when only articles of Chapters 90, 91 and 95 are presented. In such cases, the Secretariat feels that the current provisions of these Chapters should continue to apply. It has, therefore, not proposed to delete current Note 3 to Chapter 90, which stipulates that the provisions of Note 4 to Section XVI also apply to that Chapter.
7. The proposed amendment would mean that instruments or apparatus such as manometers, thermometers or automatic regulators (which are mentioned in headings 90.25, 90.26 and 90.32, respectively) would no longer be considered to be auxiliary or accessory equipment, when presented with a machine of Section XVI, but will be taken into account when classifying the machine presented. This might lead to the classification of the whole in Chapter 90 rather than Section XVI, either by application of the amended Note 3 to Section XVI, or by application of General Interpretative Rule 3 (c) if the principal function of the whole cannot be determined. The Secretariat is not sure whether this was the intention of the proponent, who may wish to clarify this point.
8. With respect to the scope of Note 4 to Section XVI (i.e., functional units) it should be noted that this Note currently stipulates that “the individual components should be intended to contribute together a clearly defined function covered by one of the headings of Chapter 84 or 85” (emphasis added). If unchanged, this provision would appear to annul the intended scope of amended Note 5. The Secretariat would, therefore, suggest inserting a reference to Chapters 90, 91 and 95. A proposal to that effect has been included in the Annex.
9. In addition, the Secretariat would like to stress that Note 4 to Section XVI explicitly refers to “a clearly defined function”. Since most of the headings of Chapters 90, 91 and 95 appear to refer to the character or the nature of the commodities, rather than their function, it might be questioned whether the proposed amendment would have the desired effect. This might be even more obvious for Chapters 91 and 95. For example, whereas headings 91.06 and 91.07 may indeed refer to a “function” (i.e., time or day recording and making or breaking electric circuits automatically at given times, respectively), the other headings of that Chapter do not necessarily refer to any function. At the same time, one may question whether the description “amusement of persons” as used in the Explanatory Note to heading 95.03, could be regarded as “a clearly defined function”. If it could not, the amended Note 4 to Section XVI would not be applicable to articles of heading 95.03. The proponent may wish to clarify this matter.
10. The Secretariat has refrained from preparing any amendments to the Explanatory Notes, pending the outcome of the discussions on this proposal.

III. CONCLUSION

11. The Sub-Committee is invited to examine the proposal to amend the Nomenclature, as set out in the Annex to this document, taking into account the comments of the Secretariat in paragraphs 3 to 10 above.

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