



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0453E1

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28th Session
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O. Eng.

Brussels, 24 July 2003.

POSSIBLE CREATION OF A NEW NOTE 4 TO CHAPTER 38

(PROPOSAL BY THE CANADIAN ADMINISTRATION)

(Item III.B.9 on Agenda)

I. BACKGROUND

1. On 30 June 2002, the Secretariat received the following note from the Canadian Administration regarding possible creation of a new Note 4 to Chapter 38. The Canadian Administration requested the submission of the proposal for consideration by the 28th Session of the Review Sub-Committee.

II. NOTE FROM THE CANADIAN ADMINISTRATION

2. "The General Explanatory Notes to Chapter 39 (pages 717 and 718) indicate that polymers in primary form may contain plasticisers, fillers, solvents, colorants and other materials. The Canadian Administration currently follows the advice provided by these Explanatory Notes to classify polymer preparations in primary form in Chapter 39. This administration is concerned that this practice does not appear to be supported by the legal structure of the Nomenclature and the use of the GIRs.
3. Currently, there are limited Section or Chapter Notes relating to the classification of polymer preparations in Chapter 39. Headings 39.01 to 39.14 provide for certain polymers in primary form, and Note 6 to the Chapter defines "primary forms". By definition, solution or dispersion forms could include a limited number of polymer preparations, for example, polymer + solvent (in the case of polymer solutions) or polymer + emulsifiers + liquid dispersing media (in the case of emulsions and dispersions). No other named preparations are specified in headings 39.01 to 39.14.

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4. Notwithstanding the descriptions of primary forms in the Explanatory Notes to Chapter 39, it appears that headings 39.01 to 39.14 do not specify polymer preparations such as polymer + filler or polymer + colorant. The **Canadian** Administration is concerned that these polymer preparations meet the description “preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included” of heading 38.24. These polymer preparations therefore appear to be classified in heading 38.24 by application of GIR 1.
5. The intended scope of Sub-Chapter I to Chapter 39 is clearly stated in the Explanatory Notes to the Chapter. To provide a legal basis for this, **Canada** proposes that a Note be added to Chapter 38 to exclude from heading 38.24 polymer preparations that have the essential character of polymers of Chapter 39. The heading already covers prepared binders for foundry moulds or cores based upon polymers and there is no intent to modify this coverage. The following is proposed :

Chapter 38

Add a new Note 4 :

“4.- With the exception of prepared binders for foundry moulds or cores, heading 38.24 does not apply to preparations having the essential character of polymers of headings 39.01 to 39.14.”

Renumber current Notes 4 to 6, accordingly.

6. Proposed Note 4 will not alter the scope of Chapter 39.”

III. SECRETARIAT COMMENTS

7. The **Canadian** Administration is proposing to create a new Note 4 to Chapter 38 to exclude products of headings 39.01 to 39.14 from heading 38.24. It has concerns as to whether classification of polymer preparations of the type “polymer + filler” or “polymer + colorant” in headings 39.01 to 39.14 is sufficiently supported by the legal structure of the Nomenclature and the use of the GIRs.
8. The Secretariat would first like to recall that according to Note 6 to Chapter 39, the expression “primary forms” applies not only to liquids, pastes, dispersions and solutions, but also to various types of solid forms, such as blocks of irregular geometric shape, lumps, powders, granules, flakes and similar bulk forms.
9. Furthermore, the General Explanatory Note to Chapter 39 (Part “Primary forms”, page 717 and 718) provides that primary forms may contain other materials, such as hardeners, other co-reactants and accelerators, plasticisers, stabilisers, fillers, colouring matter. In the Secretariat’s view, this allows quite a large number of different types and forms of products to be covered by Sub-Chapter I to Chapter 39. The **Canadian** Administration may therefore wish to further clarify the reasoning behind its proposal and to provide concrete examples of products potentially classifiable in heading 38.24 and in Sub-Chapter I to Chapter 39, the classification of which could be doubtful.

10. The Secretariat would suggest that the Sub-Committee may wish to consider whether, in the first instance, classification of these products by the HS Committee would not be desirable. The question of whether a legal amendment or an amendment of the Explanatory Notes would be advisable to clarify classification of these types of products could be examined subsequently.

IV. CONCLUSION

11. The Sub-Committee is invited to examine the possible creation of a new Note 4 to Chapter 38, as proposed by the Canadian Administration, taking into account the above comments by the Canadian Administration and the Secretariat.
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