



HARMONIZED SYSTEM  
COMMITTEE

-  
26<sup>th</sup> Session  
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NC0304E1

O. Eng.

Brussels, 26 September 2000.

STUDY WITH A VIEW TO ESTABLISHING GUIDELINES  
FOR THE CLASSIFICATION OF VEHICLES OF HEADINGS 87.02, 87.03 AND 87.04  
(Item VII.22 on Agenda)

Reference documents :

26.642 (NC/45)	40.454 (HSC/18)
26.800, Annex C/8 (NC/45 – Report)	40.625 (HSC/18)
35.350, Annex G/5 (HSC/3 – Report)	40.600, Annex H/20 (HSC/18 – Report)
35.700, Annexes E/11 and F/11 (HSC/4 – Report)	40.909 (HSC/19)
35.840 (HSC/5)	41.100, Annex G/18 (HSC/19 – Report)
35.841 (HSC/5)	41.313 (HSC/20)
35.960, Annexes G/4 and G/5 (HSC/5 – Report)	41.600, Annex F/19 (HSC/20 – Report)
39.156 (RSC/11)	42.434 (HSC/22)
39.200, Annex XI (RSC/11 – Report)	42.456 (HSC/22)
39.282 (RSC/11)	42.750, Annexes G/9 and G/33 (HSC/22 – Report)
39.332 (HSC/15)	NC0056E1 (HSC/23)
39.400, Annex E (HSC/15 – Report)	NC0145E1 (HSC/24)
39.575 (HSC/16)	NC0162E1 (HSC/24)
39.600, Annex IJ/20 (HSC/16 – Report)	NC0160E2, Annex H/7 (HSC/24 – Report)
40.083 (HSC/17)	NC0227E1 (HSC/25)
40.260, Annex IJ/9 (HSC/17 – Report)	NC0250E2, Annex IJ/16 (HSC/25 – Report)

I. BACKGROUND

1. At its 25<sup>th</sup> Session, the Committee decided, by 20 votes to 2, that the Explanatory Notes should be amended with a view to establishing guidelines for the classification of vehicles potentially classifiable in headings 87.02, 87.03 and 87.04.
2. In this connection, the Committee also held a preliminary discussion on the text and list of criteria drafted by the Secretariat in paragraph 7 of Doc. NC0227E1 and the Annex thereto, respectively, noting that administrations could submit comments and proposals in this respect to the Secretariat at a later stage. The following views were expressed :

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- (i) First paragraph of the text : “Seating capacity” might be the most important criterion for the classification of the motor vehicles of heading 87.02 and 87.03, but not those of heading 87.04. Also, it might be appropriate to insert a reference to the presence of “anchor points for installing safety seat belts” in addition to the anchor points for installing seats. The reference to “load capacity” should be deleted;
  - (ii) Second paragraph of the text : The second part was not necessary since it could lead to confusion;
  - (iii) Table :
    - 1<sup>st</sup> group of criteria : The relation between the space for the passengers and that for the goods and the relation between the weight of the passengers and that of the goods should not be used as criteria;
    - The 2<sup>nd</sup> and 3<sup>rd</sup> groups of criteria could be combined;
    - 6<sup>th</sup> criterion : The nature of the division between the driver/passenger section and the rear section should be clearly indicated;
    - 8<sup>th</sup> criterion : The accuracy of this criterion should be checked in respect of the vehicles of heading 87.02;
    - Several of the criteria might not be applicable to certain motor vehicles used in different regions around the world.
3. The Committee also agreed that the 11<sup>th</sup> group of criteria should not be included in the study as it would not be particularly useful in determining the classification of the vehicles concerned.
  4. Further, the Secretariat should also study the possibility of inserting the above criteria in the Explanatory Notes as indicative “guidelines” in text form rather than tabular form.
  5. Finally, the Secretariat was requested to prepare a new document on the basis of the above discussions for consideration by the Committee at its next session. Administrations were requested to submit their comments and proposals, if any, to the Secretariat during the intersession.

II. NOTE FROM THE U.S. ADMINISTRATION CONCERNING THE  
AMENDMENT OF THE EXPLANATORY NOTES TO  
HEADINGS 87.03 AND 87.04

6. On 1 August 2000, the Secretariat received the following note and proposals from the US in response to its letter of 3 May 2000 to administrations :
  - 6.1. At its 25<sup>th</sup> Session (March 2000) the HSC instructed the Secretariat to prepare draft proposals for amending the Explanatory Notes to Chapter 87. As noted in paragraph 5 of Annex IJ/16 of Doc. NC0250 (Report of HSC/25), the Committee anticipated that the Secretariat would consider comments and proposals from administrations. The U.S. Administration submits, for

consideration by the Committee, the attached proposal for amending the Explanatory Notes to headings 87.03 and 87.04 together with the following comments which explain the proposal.

- 6.2. These amendments to the Explanatory Notes to Chapter 87 fall within Article 8(2) of the Convention, the “corrigendum” procedure.” The amendments do not fall within Article 16 of the Convention, *i.e.*, the procedure for amending the legal text of the Nomenclature. The Committee has consistently recognized that an amendment by corrigendum cannot amend the scope of the terms in the legal text. Therefore, any changes to the Explanatory Notes by corrigendum should not introduce criteria that, if applied, would have the effect of changing long-standing interpretation and classification of motor vehicles under the current Nomenclature. Such a result would subvert the procedures established under the Convention for amending the legal texts.
- 6.3. In view of the above, the U.S. Administration proposes that these amendments to the Explanatory Notes to Chapter 87 should reflect criteria that have traditionally been applied in the classification decisions of the Committee from the inception of the Harmonized System. Taking into consideration the comments in Annex IJ/16 to Doc. NC0250E2 (Report of the 25<sup>th</sup> Session), the U.S. Administration submits an alternative proposal for amending the Explanatory Notes concerning criteria for classification of certain vehicles.
- 6.4. In Doc. NC0227E1 there is a draft proposal to amend the General Explanatory Note to Chapter 87. After further review, it appears that the intent of the HSC would be better achieved by amending the Explanatory Notes to headings 87.03 and 87.04 so as to identify the specific criteria that are applicable to the vehicles classifiable in those headings. By including criteria within the specific Explanatory Notes, we believe that the criteria would be more uniformly and consistently applied than if a “choice” of applicable criteria would have to be made from a general list in the General Explanatory Note to Chapter 87. The U.S. proposal would eliminate the need to identify the criteria which may or may not be applicable to vehicles of the different headings. As such, our proposal to amend the ENs to these headings would appear to be more direct and to provide clearer guidance to the reader.
- 6.5. Finally, it should be noted that the U.S. proposal does not include criteria related to the relative allocation of load capacity or interior space. Although the criterion of “load capacity” was used, in part, in a recent decision of the HSC to classify certain double cab pickup vehicles, we believe that a specific reference in the Explanatory Notes could be misleading and could cause an administration to focus solely on that criterion or to give controlling effect to that criterion. As was demonstrated in Doc. 42.051, the use of this criterion in lieu of the traditional criteria would result in a change in the long-standing classification of certain vehicles. As indicated above, a change in the scope of a heading shall only be effected by an amendment under Article 16 of the Convention. Therefore, the U.S. submits, for consideration by the Committee, a proposal that incorporates all of the criteria that have traditionally been applied by the Committee in the classification of van-type and pick-up type vehicles since the implementation of the Harmonized System.

### **Proposed texts for amendments to Explanatory Notes**

Explanatory Note to heading 87.03

On page 1547 :

Insert the following new paragraph immediately after the current penultimate paragraph :

“The classification of vehicles in this heading is determined by certain features which indicate that the vehicles are principally designed for the transport of persons rather than for the transport of goods (heading 87.04). These design features are especially helpful in determining classification of vehicles which have a gross vehicle weight rating of approximately 5 tonnes or less and which have a single enclosed interior space comprising a passenger area and an open area. Included in this category of vehicles are those commonly known as “sports utility vehicles”

and “minivans.” The following criteria are indicative of the design characteristics generally applicable to such vehicles which fall in this heading:

- seating for persons in the rear area behind the driver and front passenger seats
- permanent anchor points for rear seats and safety restraints
- seating that may be fixed, fold-away, removable from anchor points or collapsible, and that has safety restraints for each person
- rear windows along the two side panels
- sliding, swing-out or lift-up door or doors, with windows, in the rear or side
- absence of a permanent panel or barrier between the seating and an open space behind the seating
- interior finish and fittings similar to that found in passenger vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).”

Explanatory Note to heading 87.04

On page 1548 :

Insert the following item (5) :

“(5) Dual-use vehicles, including two-door or four-door double cab pick-up vehicles, typically having a gross vehicle weight rating of 5 tonnes or less. These vehicles usually have separate platforms for the transport of goods, and they may have rear bench-type seats that are without safety restraints and that fold flat against the sides to permit full use of the platform for transport of goods. The following criteria are indicative of the design characteristics generally applicable to such vehicles which fall in this heading:

- separate platform for load and separate cabin for passengers (e.g., double-cab pick-up vehicles)
- absence of windows in the two side panels (van-type vehicles)
- rear seating lacking safety restraints for passengers and typically collapsing or folding against the sides to allow full use of a flat floor (van-type vehicle) or a separate platform (double-cab pick-up vehicle) for the transport of goods
- absence of interior finish and fittings in the area behind the driver and front passenger seating (van-type vehicle)
- open load platform (e.g., separate platform with side panels and drop-down tailgate of a kind typically found in pick-up vehicles).”

### III. SECRETARIAT COMMENTS

#### US Note

7. The Secretariat first would like to express its thanks to the US for its contribution and proposals for amendments to the Explanatory Notes with a view to facilitating the Secretariat’s and the Committee’s work.

8. The Secretariat agrees with the following points made by the US in its note :
- (a) Relevant amendments to the Explanatory Notes fall within Article 8 (2) of the HS Convention (para. 6.2 above);
  - (b) These amendments cannot alter the scope of the terms of the legal text (para 6.2 above);
  - (c) They cannot introduce new criteria that would change the long-standing interpretation and classification of motor vehicles under the present HS (para 6.2 above);
  - (d) They should reflect the criteria that have traditionally been applied in the classification decisions of the Committee since the introduction of the HS (para 6.3 above);
  - (e) The intent of the Committee could be better achieved by amending the Explanatory Notes to headings 87.03 and 87.04 so as (i) to identify the specific criteria that are applicable to the vehicles classifiable in those heading and (ii) to avoid confusion that might arise from selecting criteria (which might or might not be applicable to the vehicle in question) from a general list in the General Explanatory Note to Chapter 87. In fact , amending the General Explanatory Note to the Chapter was an idea expressed at the 24<sup>th</sup> Session of the Committee, but there was no decision thereon (para 6.4 above).

### **US Proposals**

9. The Secretariat has the following comments on the US proposal for amending the Explanatory Note to heading 87.03 :
- (a) Second sentence : The Secretariat does not agree with inserting the expression “gross vehicle weight” in the Explanatory Note to heading 87.03, as it has no direct relevance to that heading. That expression is already used in heading 87.04 in relation to motor vehicles for the transport of goods and explained in the Explanatory Note thereto;
  - (b) Second sentence : The expression “open area” might be confusing when used after “a single enclosed interior space”. The Secretariat prefers the alternative expression “an area that may be used for the transport of both persons and goods”;
  - (c) Third sentence : The Secretariat would propose to insert “multipurpose or dual-use vehicles” after “commonly known as” and to refer to “van-type vehicles, certain pick-up vehicles and sports utility vehicles” as examples in parentheses;
  - (d) First three indents : These features could be combined as suggested at the 25<sup>th</sup> Session of the Committee (see para. 3(iii), second indent, above).
10. The Secretariat has the following comments on the US proposal for amending the Explanatory Note to heading 87.04 :
- (a) General : Rather than adding a new Item to the second paragraph of the Explanatory Note, the Secretariat would prefer to insert a new third paragraph therein similar in nature to that for the Explanatory Note to heading 87.03;
  - (b) First sentence : The Secretariat is against inserting “double cab” before pick-up vehicles, as in the past the Committee classified a certain double cab pick-up vehicle in

heading 87.03 (see Classification Opinion 8703.23/2) but several others in heading 87.04 (see Classification Opinions 8704.21/1, 8704.31/1 and 2);

- (c) Second sentence : Bench-type seats behind the driver's section may have safety restraints and may be "non-collapsible" (see Classification Opinions 8704.21/1, 8704.31/1 and 2);
- (d) Indents : Features listed could be grouped for van-type vehicles and pick-up vehicles.

### **Secretariat proposals**

11. On the basis of the Committee's comments on the drafts presented in paragraph 7 of Doc. NC0227E1 and its Annex, the Secretariat proposes to insert a new paragraph of a general nature to Item (2) of the General Explanatory Note to Chapter 87 so as to read :

"(2) Motor vehicles designed for the transport of persons (heading 87.02 or 87.03) or goods (heading 87.04) or for special purposes (heading 87.05).

Certain motor vehicles which might potentially fall in heading 87.02, 87.03 or 87.04 (e.g., those commonly known as "multipurpose" or "dual-use" vehicles such as van-type vehicles) should be classified on a case-by-case basis. Although, for example, seating capacity is an important element affecting the classification of such motor vehicles in heading 87.02 or 87.03, as a general rule, the classification of the vehicles concerned is determined not only on the basis of their seating capacity, but also many other features such as the presence or absence of seats or anchor points and fittings for installing seats in the rear section, safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts), interior finish, comfort features for the transport of persons, design features (exterior and interior), etc. (see Explanatory Notes to headings 87.03 and 87.04)."

12. Neither the US nor any other administration had proposed any amendment to the Explanatory Note to heading 87.02 by the time of preparation of this document. The Committee is requested to clarify its position as to whether such an amendment is needed.
13. Although one of the views expressed at the 25<sup>th</sup> Session was that the criterion related to "load- or space-capacity" should not be used (see para. 2 (iii), first indent, above), the Secretariat would like to remind the Committee that, at its 23<sup>rd</sup> Session, it considered "cargo capacity" as an "important" element in classifying a certain pick-up vehicle in heading 87.04 (see Annexes G/15 and M/27 to Doc. NC0090E2, HSC/23 - Report). The Committee is requested to express its view as to whether "cargo capacity" should be included in the Explanatory Note amendments as an indicative design characteristic for the classification of "double-cab pick-up vehicles".
14. On the basis of the foregoing, the Secretariat proposals for amendments to the Explanatory Notes to headings 87.03 and 87.04 are as follows :

#### Heading 87.03.

Page 1547 :

Insert the following new paragraph after the penultimate paragraph:

“The classification of certain motor vehicles in this heading is determined by their features which indicate that the vehicles are principally designed for the transport of persons rather than for the transport of goods (**heading 87.04**). These design features are especially helpful in determining the classification of motor vehicles which have a single enclosed interior space comprising an area for the driver and passengers and another area that may be used for the transport of both persons and goods. Included in this category of motor vehicles are those commonly known as “multipurpose” or “dual-use” vehicles (e.g., van-type vehicles, sports utility vehicles and certain pick-up vehicles). The following features are indicative of the design characteristics generally applicable to such vehicles which fall in this heading:

- (a) Presence of seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or permanent anchor points and fittings for installing seats and safety equipment in the rear area behind the area for the driver and front passengers. Such seats may be fixed, fold-away, removable from anchor points or collapsible;
- (b) Presence of rear windows along the two side panels;
- (c) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels or in the rear;
- (d) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that may be used for the transport of both persons and goods;
- (e) Presence in the rear area of comfort features and interior finish and fittings similar to that found in passenger vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays, etc.).”

Heading 87.04.

Page 1548 :

Insert the following new third paragraph :

“The classification of certain motor vehicles in this heading is determined by their features which indicate that the vehicles are principally designed for the transport of goods rather than for the transport of persons (**heading 87.03**). These design features are especially helpful in determining the classification of motor vehicles which have a separate closed or open rear area normally used for the transport of goods but may be used for the transport of persons as well. Included in this category of motor vehicles are those commonly known as “multipurpose” or “dual-use” vehicles (e.g., van-type vehicles, pick-up vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to such vehicles which fall in this heading:

- (a) Presence of bench seats with or without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away, removable from anchor points or collapsible to allow full use of a rear floor (van-type vehicles) or a separate platform (double-cab pick-up vehicles) for the transport of goods. In some cases, they may be fixed;
- (b) Presence of a separate cabin for the driver and passengers and a separate platform with side panels and a drop-down tailgate (pick-up vehicles);
- (c) Absence of rear windows along the two side panels but presence of sliding, swing-out or lift-up door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
- (d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (e) Absence of comfort features and interior finish and fittings similar to that found in passenger vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays, etc.).”

15. Finally, as, at the 25<sup>th</sup> Session of the Committee, it was indicated that several of the criteria suggested in Doc. NC0227E1 might not be applicable to certain motor vehicles used in different regions around the world, delegates are strongly requested to clarify whether the above proposals are acceptable to their administrations.

#### IV. CONCLUSION

16. Taking into account the US and the Secretariat comments and proposals above, the Committee is, first, invited to confirm that the amendments to the Explanatory Notes to Chapter 87 in the context of this study will be made by corrigendum (i.e., Article 8 procedure).
17. The Committee is also invited to express its views as to whether:
- (a) the General Explanatory Note to Chapter 87 should be amended as suggested by the Secretariat in paragraph 11 above;
  - (b) there is a need to amend the Explanatory Note to heading 87.02 (see paragraph 12 above);
  - (c) “cargo or load capacity” should be included in the Explanatory Note amendments as an indicative design characteristic for the classification of “double-cab pick-up vehicles” (see paragraph 13 above);
  - (d) it prefers the US proposals (see paragraph 6 above) or the Secretariat proposals (which are in fact mainly based on the US proposals - see paragraph 14 above) for amendments to the Explanatory Notes to headings 87.03 and 87.04;



- (e) the design characteristics included in the above proposals might be applicable all around the world (see paragraph 15 above).

18. On the basis of the Committee's conclusions on the above points, the Secretariat could prepare the draft Explanatory Note amendments for examination by the next presessional Working Party.

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