



HARMONIZED SYSTEM  
COMMITTEE

-  
26<sup>th</sup> Session  
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NC0290E1

O. Eng.

Brussels, 12 October 2000.

CLASSIFICATION OF THE "TATA SUMO 483"

(RESERVATION BY BRAZIL)

(Item VII.8 on Agenda)

Reference documents :

NC0056E1 (HSC/23)

NC0145E1 (HSC/24)

NC0162E1 (HSC/24)

NC0160E2, Annex H/7 (HSC/24 – Report)

NC0227E1 (HSC/25)

NC0234E1 (HSC/25)

NC0250E2, Annexes H/15 and IJ/16 (HSC/25 – Report)

I. BACKGROUND

1. Following the classification of the "TATA SUMO 483" motor vehicle in heading 87.02 by the Committee by 19 votes, against 7 votes for heading 87.03 and 1 vote for heading 87.04 (see Annex H/15 to Doc. NC0250E2 (HSC/25 – Report)), the Brazilian Administration entered a reservation in accordance with the provisions of Article 8.2 of the HS Convention and Council Decision No. 298.
2. On 8 September 2000, the Secretariat received the following Note from the Brazilian Administration regarding its arguments in support of the reservation it had entered.

II. NOTE FROM THE BRAZILIAN ADMINISTRATION

3. "Enclosed you can find our reasons for the reservation we have entered against the decision of the Harmonized System Committee, at its 25<sup>th</sup> Session, concerning the classification of the "TATA SUMO 483" motor vehicle :
  - 3.1. At its 25th Session, the Harmonized System Committee classified the "TATA SUMO 483" motor vehicle in HS heading 87.02 by 19 votes, against 7 votes for heading 87.03 and 1 vote for heading 87.04. The Committee considered that the vehicle was capable of transporting 10 or more persons, in accordance with the legal text of heading 87.02.

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- 3.2. The Brazilian Administration voted for heading 87.03 since it believes that this vehicle cannot transport 10 adult passengers of normal size.
- 3.3. We note that this classification question was posed by the Argentine Administration which, prior to the 23rd Session of the HSC, had described the characteristics of the vehicle in question. The vehicle consists of two completely different parts as regards its usage: (1) the front of the vehicle, intended for the transport of persons, has six fixed seats with anchorage points and seat belts, and (2) the rear of the vehicle which can be used either for the transport of goods or for the transport of persons has two fold-away bench seats without anchorage points, stored in lateral panels, longitudinally with respect to the vehicle's transmission shaft.
- 3.4. Argentina's arguments for the classification of this product in heading 87.03 are based essentially on the dimensions and environment of these folding seats. Each of the two folding seats is 78 cm in length and 44 cm in depth (seat width), the height of the seats is 37 cm and there is 50 cm between them. The Argentine Administration believes that the 78 cm length measurement for the folding seat is very short for two adults of normal size (approximately 70 kg in weight and 1.70 m in height) to be transported in safe and comfortable conditions, given that this would require a length of at least 90 cm. Furthermore, the height of the seat should be at least 40 cm, but the seats of this vehicle are only 37 cm. Argentina adds that climbing into the rear of the vehicle is very difficult for adults of normal height because they must enter by a 120 cm high door while upright and walking.
- 3.5. The Argentine Administration therefore considered that the "TATA SUMO 483" vehicle should be classified in heading 87.03 because, in their dimensions and environment, the seats for the transport of persons were not suitable for the transport of adults of normal size.
- 3.6. The Committee's decision to classify this vehicle in heading 87.02 was mainly based on consistency with its previous decisions. Several delegates pointed out that, in its previous decisions concerning the classification of vehicles for the transport of persons, the Committee had not taken the size of those persons into account. At its 24th Session, the Committee concluded that, in the context of headings 87.02 and 87.03, the term "persons" covered both adults and children and that it seemed inadvisable and inappropriate to place limitations in the HS defining the term "persons" and the expression "adults of normal size" for the purpose of the classification of motor vehicles.
- 3.7. These were the considerations that led the Committee to decide, at its 24th Session, to classify the "Ssang Yong MUSSO 601" and "Ssang Yong MUSSO 602" model motor vehicles in heading 87.02.
- 3.8. The Brazilian Administration would, first of all, like to draw the Committee's attention to the importance for many administrations of the guidelines for the classification of vehicles in heading 87.02 or 87.03. For our Administration, like many others, the demarcation line between these headings corresponds to a distinction of crucial importance for our economies, namely that between public transport vehicles of heading 87.02 and private cars of heading 87.03. Brazil's tax structure takes this distinction into account because, for obvious reasons of social policy, we do not wish to place an excessive tax burden on the importation of public transport vehicles. We therefore have numerous disputes concerning the importation of vehicles whose classification in heading 87.02 or heading 87.03 is not immediately obvious. This is also a problem for the Argentine and, we believe, many other administrations.
- 3.9. Thus, the definition, within the context of the HS, of the internal dimensions of the passenger space of vehicles that can seat 10 or more persons is a matter of considerable importance for administrations and for industry. Clearly, a public transport vehicle for ten working adults may be completely different, both in terms of the available interior space and in terms of the shape and

uniformity of the seats, not to mention other aspects, from a vehicle for transporting a family group of ten, including four to six children.

- 3.10. This is why we do not share the view, sometimes expressed in this Committee, according to which, in the context of headings 87.02 and 87.03, the term “persons” covers both adults and children and it would be inadvisable and inappropriate to place limitations in the HS defining the term “persons” and the expression “adults of normal size” for the purpose of the classification of motor vehicles.
- 3.11. It is not -- it should be made clear -- a question of defining “persons” for the purposes of the HS but simply of clarifying the physical parameters (weight and height) of a person for the purpose of determining the space, together with the dimensions of the seats and the environment, suitable for accommodating ten persons, in order objectively to establish the extremely important demarcation line between HS headings 87.02 and 87.03. Brazil considers that it is the responsibility of the Harmonized System Committee to define these parameters, since the Harmonized System should be the sole language for the uniform classification of goods at world level. In this connection, it does not seem to us appropriate to rely upon the opinions of authorities or institutes from only one Contracting Party for assessing the capacity of vehicles because of the risk of the classification of the product being determined on the basis of the opinion given in the country requesting classification.
- 3.12. We also consider it risky to decide the classification of these vehicles on a case-by-case basis, since, given the lack of clear and objective criteria, the quality of the lobbying by the individual manufacturers might sway the Committee’s decision and lead to a lack of uniformity in the decisions taken.
- 3.13. The Brazilian Administration fully supports Argentina’s comments on the classification of the “TATA SUMO 483” vehicle and considers the figures for the weight and height of an adult of normal size (70 kg and 1.70 m) proposed by that Administration to be perfectly suitable for the purpose of determining the dimensions and other parameters of importance for the classification of vehicles in headings 87.02 and 87.03. In Brazil, this criterion for the average weight of an adult (70 kg) is used, for example, in specifying the maximum capacity of lifts. We believe that in many countries these measures of weight and height correspond fairly closely to the normal size of an adult. We recall that the Harmonized System Committee used an average weight of 70 kg at its 22nd Session for classifying the “Maxi Pampa”, “Chevrolet LUV 2300” and “Toyota Hilus Surf4WD” vehicles on the basis of the ratio of the weight of the passengers to the weight of the load.
- 3.14. To conclude, Brazil is drawing to the Committee’s attention reasons why it should consider the possibility of reviewing its previous decision to classify the “TATA SUMO 483” vehicle in heading 87.02. The Brazilian proposal comprises:
- (i) classifying the “TATA SUMO 483” vehicle in heading 87.03;
  - (ii) adding to the Explanatory Note to heading 87.02 language designed to make it clear that the passenger space and seats of vehicles of that heading must have dimensions sufficient to accommodate ten or more adults of normal height and weight (1.70 m and 70 kg, respectively);
  - (iii) submitting this question for discussion with a view to the insertion of a Note to Chapter 87 within the context of the current round of revision of the Harmonized System.”.

### III. SECRETARIAT COMMENTS

4. As regards the arguments put forward by the Brazilian Administration in respect of the definition of the term persons in the context of headings 87.02 and 87.03, the Secretariat recalls that the Committee at its 24<sup>th</sup> Session concluded that it was very difficult to define the term “persons” in the HS and therefore it was impossible to establish a criterion referring to “adults of normal size” since the meaning of these expressions differed from one country to another in accordance with normal regulations. Placing limitations in the HS defining these expressions for the purpose of the classification of motor vehicles was inadvisable and inappropriate (see paragraphs 1 and 2 of Annex H/7 to Doc. NC0160E2 (HSC/24 – Report)).
5. As to using the “space” and “weight” capacity as criteria for distinguishing the motor vehicles of headings 87.02, 87.03 and 87.04, the Committee at its 25<sup>th</sup> Session agreed that 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 (see paragraph 5(iii) of Annex IJ/16 to Doc. NC0250E2 (HSC/25 – Report)).
6. Therefore, the Secretariat believes that the Brazilian proposal for inserting in the Explanatory Note to heading 87.02 “the passenger space and seats of vehicles of this heading must have dimensions to accommodate ten or more adults of normal height and weight (1.70 m and 70 kg, respectively)” should be examined by the Committee in the context of Agenda Item VII.22.
7. Finally, the Secretariat has in the past brought to the attention of the Committee the fact that the classification of the motor vehicles of headings 87.02, 87.04 and 87.04 was one of the areas of the HS subject to frequent disputes. As the Brazilian concerns merit consideration, if the Committee agrees, the Secretariat could submit the Brazilian proposal to the Review Sub-Committee with a view to the insertion of a new Note to Chapter 87 within the context of the current HS review cycle, together with any other proposals from other interested administrations.

### IV. CONCLUSION

8. Taking into account the Brazilian arguments and proposals and the Secretariat comments above, the Committee is invited to :
    - (a) re-examine the classification of the “TATA SUMO 483” motor vehicles; and
    - (b) express its views as to whether (i) the Explanatory Note to heading 87.02 should be amended as proposed by Brazil (see paragraphs 3.14.(ii) and 6 above) and (ii) this proposal should also be submitted to the Review Sub-Committee for consideration during the current review cycle (see paragraphs 3.14.(iii) and 7 above).
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