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ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM
COMMITTEE

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-

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(+ Annex)

O. Eng.

Brussels, 18 April 2001.

AMENDMENTS TO THE EXPLANATORY NOTES TO HEADINGS 87.03 AND 87.04

(Item VIII.8 on Agenda)

Reference documents :

26.642 (NC/45)	40.625 (HSC/18)
26.800, Annex C/8 (NC/45 – Report)	40.600, Annex H/20 (HSC/18 – Report)
35.350, Annex G/5 (HSC/3 – Report)	40.909 (HSC/19)
35.700, Annexes E/11 and F/11 (HSC/4 – Report)	41.100, Annex G/18 (HSC/19 – Report)
35.840 (HSC/5)	41.313 (HSC/20)
35.841 (HSC/5)	41.600, Annex F/19 (HSC/20 – Report)
35.960, Annexes G/4 and G/5 (HSC/5 – Report)	42.434 (HSC/22)
39.156 (RSC/11)	42.456 (HSC/22)
39.200, Annex XI (RSC/11 – Report)	42.750, Annexes G/9 and G/33 (HSC/22 – Report)
39.282 (RSC/11)	NC0056E1 (HSC/23)
39.332 (HSC/15)	NC0145E1 (HSC/24)
39.400, Annex E (HSC/15 – Report)	NC0162E1 (HSC/24)
39.575 (HSC/16)	NC0160E2, Annex H/7 (HSC/24 – Report)
39.600, Annex IJ/20 (HSC/16 – Report)	NC0227E1 (HSC/25)
40.083 (HSC/17)	NC0250E2, Annex IJ/16 (HSC/25 – Report)
40.260, Annex IJ/9 (HSC/17 – Report)	NC0304E1 (HSC/26)
40.454 (HSC/18)	NC0340E2, Annex G/21 (HSC/26 – Report)

I. BACKGROUND

1. At its 26th Session, the Harmonized System Committee examined the US and the Secretariat proposals for amendments to the Explanatory Notes to Chapter 87 with a view to establishing guidelines for the classification of vehicles of headings 87.02, 87.03 and 87.04 (see Doc. NC0304E1 and Annex G/21 to Doc. NC0340E2 – HSC/26 Report).
2. Regarding the choice between the US proposal and the Secretariat proposal for amendments to the Explanatory Notes to headings 87.03 and 87.04, the US Delegate appreciated the Secretariat's comments on the original US proposal, but pointed out that he had submitted to the Secretariat a new text of revised US proposals to take care of several

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concerns. He invited the Committee to take the revised US proposals into account together with the Secretariat's proposals.

3. In respect of the question of whether the design characteristics included in the proposals might be applicable all around the world, it was noted that, at the 25th Session of the Committee, many delegates had supported the idea of amending the Explanatory Notes to Chapter 87 in the context of this study. Those administrations were urged to co-operate with the Secretariat to find the appropriate answer to that question.
4. After discussion, the Committee agreed to continue its consideration of the possible amendments to the Explanatory Notes to headings 87.03 and 87.04 on the basis of the Secretariat's proposals set out in paragraph 14 of Doc. NC0304E1 and the revised US proposals. Administrations were invited to provide the Secretariat with their comments and proposals, if any. The Secretariat was instructed to prepare a new document for examination by the Committee at its next session. The Committee would also rule, at its next Session, on the possible use of the "cargo or load capacity" criterion.

II. SECRETARIAT'S ACTION AND COMMENTS

5. On 8 January 2001, the Secretariat invited administrations to send their comments and proposals, if any, to the Secretariat.

Note from the Mexican Administration

6. On 8 February 2001, the Secretariat received the following note from Mexico :
 - 6.1. "...We deem it recommendable to amend the General Explanatory Note to Chapter 87 as suggested by the Secretariat in paragraph 11 of Doc. NC304E1.
 - 6.2. Regarding the possible amendment of the Explanatory Note to heading 87.02, we consider that such modification is not necessary, based on the discussion of this matter held during the 26th HSC Session, for the classification of the vehicle "TATA SUMO", in which was determined that the main criterion to include or reject a vehicle in 87.02 are the producer's specifications.
 - 6.3. Finally, we deem more appropriate the Secretariat's proposal (paragraph 14 of Doc. NC0304E1) for the amendments to the Explanatory Notes to headings 87.03 and 87.04...".

Note from the Canadian Administration

7. On 19 February 2001, the Secretariat received the following note from Canada :
 - 7.1. "...In Doc. NC0304E1, the Secretariat requested member administrations to provide comments on the amendments to the Explanatory Notes for headings 87.03 and 87.04 that are contained in the paragraph 14 of the document. Our administration would like to provide the following comments for consideration by the Committee.

Principally Designed

- 7.2. One factor that should be afforded special consideration is the text to heading 87.03 that reads, in part, "motor vehicles principally designed for the transport of persons." The term "principally designed" does not appear in either heading 87.02 or 87.04. In the generally accepted

dictionary sense, “principally” is defined as “for the most part”, “above all” or “chiefly.” Although a vehicle could have an ancillary function such as the transport of goods, our administration interprets the heading text to mean that the function to transport persons must be predominant and be reflected in the design envelope. The fact that a vehicle can transport both persons and goods does not automatically lead to a classification in heading 87.03 or exclude it from consideration in heading 87.04.

- 7.3. This interpretation is supported by the fact that station wagons are specifically named in the heading text and Explanatory Note to heading 87.03. Station wagons are passenger motorcars that are designed with a larger interior volume than other passenger vehicles of comparable size. The additional space can be used for the transport of either persons or goods. However, station wagons are principally designed for the transport of persons and are therefore properly classified in heading 87.03.

Cargo or Load Capacity

- 7.4. The Canadian administration believes that a simple comparison of space allotted for passengers versus goods is not a reliable criterion. Vehicles designed for the transport of goods have a separate body for the transport of persons and another separate body for the transport of goods. This is reflected in several decisions in the Compendium of Classification Opinions. Based on consultations with the industry, our administration believes that the separate cargo area is characterized by the presence of a cargo bed. This design characteristic is the true test for distinguishing between the motor vehicles of headings 87.03 and 87.04. A single cab pick-up vehicle, for example, is designed for the transport of goods by virtue of its separate cargo bed area. The design envelope of the motor vehicle provides for two to three persons including the driver. The club-cab and quad-cab versions of the same pick-up vehicle have an enhanced capability for the transport of an additional three persons as well as having a larger separate cargo bed. However, the presence of a separate cargo bed area clearly demonstrates these motor vehicles are designed for the transport of goods.

Crossover Vehicles

- 7.5. The term “multipurpose or dual use vehicles” does not adequately reflect the terminology used in the North American motor vehicle industry. The term “crossover vehicles” is more commonly used in referring to vehicles that incorporate features of vehicles of both heading 87.03 and 87.04. Accordingly, the term “crossover vehicles” should also be included in any amendments to the Explanatory Notes to headings 87.03 and 87.04.

Certain Pick-up Vehicles

- 7.6. The proposed amendments to the Explanatory Note to heading 87.03 make reference to “certain pick-up vehicles” as an example of multipurpose or dual use vehicles and suggest that some pick-up vehicles may be classified in heading 87.03. Our administration’s position is that the presence of a separate cargo bed gives all pick-up vehicles the essential character of vehicles for the transport of goods. Retention of this example would dramatically change or obfuscate the definition of pick-up vehicles. We therefore recommend that this reference should be deleted from the proposed amendment.

Interior Fittings

- 7.7. In many automotive markets, there are no differences in the interior finish and fittings that are found in the passenger areas of motor vehicles of both headings 87.03 and 87.04. Regardless of motor vehicle type, some customers require the same level of passenger comfort and luxury. The quality of the interior fittings, therefore, is determined by customer demand and does not provide a true distinction between vehicles of headings 87.03 and 87.04. We therefore recommend that point (e) in the proposed new Explanatory Notes to both headings 87.03 and 87.04 (paragraph 14 to Doc. NC0304E1) be deleted or modified.

Revised Amendments

- 7.8. In view of the foregoing, our administration believes that the proposed amendments outlined in paragraph 14 of Doc. NC0304E1 require further modification. In this regard, we submit the following revised amendments for consideration :

Explanatory Note to heading 87.03

On 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 variously known as “crossover”, “multipurpose” or “dual use” vehicles (e.g., van-type vehicles and certain sports utility vehicles). The following design features are indicative of the vehicles which fall in this heading :

- (a) Absence of a separate cargo bed;
- (b) 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, foldaway or removable from anchor points.
- (c) Presence of rear windows along the two side panels;
- (d) Presence of sliding-out or lift-up door or doors, with windows, on the side panels or in the rear;
- (e) 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;
- (f) Presence of comfort features and interior finish and fittings throughout the vehicle interior that are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays, etc.).”

Explanatory Note to heading 87.04

On 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 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 variously known as “crossover”, “multipurpose” or “dual use” vehicles (e.g., van-type vehicles, double cab pick-up vehicles and

certain sports utility vehicles). The following design features are indicative of the vehicles, which fall in this heading :

- (a) The presence of a cargo bed; (This is the essential design feature that characterizes a vehicle designed for the transport of goods.)
- (b) 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 foldaway, removable from anchor points or collapsible to allow full use of 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.
- (c) Presence of a separate cabin for the driver and passengers and a separate cargo bed with side panels and a drop-down tailgate (pick-up vehicles);
- (d) Absence of rear windows along the two side panels but presence of sliding, swing-out or lift door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);
- (e) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (f) Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays, etc.).”

Note from the Russian Administration

- 8. On 5 March 2001, the Secretariat received the following note from the Russian Federation :
 - 8.1. “...The State Customs Committee of the Russian Federation has re-examined the classification of motor vehicles in headings 87.02, 87.03 and 87.04 to introduce a clear distinction between these headings.
 - 8.2 First of all, we would like to support the amendments suggested by the Secretariat to the Explanatory Notes to headings 87.03 and 87.04 as they provide general and flexible criteria to be used for classification of motor vehicles and reflect today’s rapid changes in auto manufacturing technology.
 - 8.3 As for the “cargo or load capacity” criterion, we believe that it should be inserted into the Legal Notes to headings 87.03 and 87.04 rather than the Explanatory Notes to headings, taking into account the influence such amendments may have upon interpretation and classification of the vehicles concerned...”.

Secretariat Comments

- 9. The first point the Secretariat would like to make is that the question of “whether the design characteristics included in the proposed amendments to the Explanatory Notes might be applicable all around the world” has not yet been answered by the administrations concerned.
- 10. However, the United States, Canada, Mexico, the Russian Federation and the Secretariat are in general agreement on **a basic text** for the amendments to the Explanatory Notes to headings 87.03 and 87.04.

11. On this basis the Secretariat has prepared, taking into account the alternative proposals from the United States and Canada, draft amendments to the above-mentioned Explanatory Notes and appended them to this document. Alternative proposals by the United States (US), Canada (CAN) and the Secretariat (SEC) were introduced in square brackets. It should be noted that several of these alternative proposals simply concern linguistic details (e.g., “variously” vs. “commonly” or “criteria” vs. “features”).
12. Mexico has expressed support for the amendment of the General Explanatory Note to Chapter 87, as suggested by the Secretariat in paragraph 11 of Doc. NC0304E1 (see subparagraph 6.1 above). In this connection it should be noted that the Committee at its 26th Session had agreed that, for the time being, such an amendment was not necessary, but had not taken a final decision. The Committee is therefore invited to rule on whether the General Explanatory Note to Chapter 87 should be amended as suggested by the Secretariat in paragraph 11 of Doc. NC0304E1.
13. The Committee is also invited to express its views as to whether the US proposal concerning the insertion of a reference to the “gross vehicles weight rating of approximately 5 tonnes or less” in the introductory paragraphs of the draft amendments to the Explanatory Notes to headings 87.03 and 87.04 is useful in distinguishing between the vehicles of these headings.
14. On the US proposal for the insertion, in the introductory paragraph of the draft amendments to the Explanatory Note to heading 87.04, of the expression “but may have rear bench-type seats...”, the Secretariat is of the view that this idea is already reflected in draft item (b) of that Note. To avoid an unnecessary repetition, the Committee is invited to express its views as to whether the US proposal is acceptable.
15. The US proposal for item (d) of the draft amendments to the Explanatory Note to heading 87.04 is limited to the “absence of rear windows” along the two side panels. The Secretariat agrees, but believes that this item should also make a reference to the “presence of doors” along the side panels. The Committee is invited to express its preference.
16. As regards the Canadian view on the possible use of the “cargo or load capacity criterion” (see subparagraph 7.4 above), the Secretariat had reminded the Committee (in paragraph 13 of Doc. NC0304E1) that, at its 23rd Session, it had considered “cargo capacity” as an “important” element in classifying a pick-up vehicle in heading 87.04.
17. At the 26th Session, while several delegates believed that this criterion could be useful in addition to the features listed in the proposed amendment, noting that it was applied by the Committee in the past, other delegates strongly opposed this idea, because cargo or load allocation had only recently been applied as a classification criterion for only one type of vehicle. These delegates believed that, although cargo or load allocation could be applicable only to “pick-up” type motor vehicles, it could be inappropriately applied by many administrations to other types of vehicles (e.g., van type vehicles) because it would be considered easy to use.
18. The Russian Administration believes that the “cargo or load capacity” criterion should be inserted into the legal notes to headings 87.03 and 87.04 rather than the Explanatory Notes, taking into account the influence such amendments may have on the interpretation and classification of the vehicles concerned (see subparagraph 8.3 above).

19. Therefore, the Committee is invited to rule on whether “cargo or load capacity” should be included in the proposed Explanatory Notes amendments, in the legal texts or in neither.
20. Canada indicates that the expression “multipurpose or dual use vehicles” (in the introductory paragraphs) does not adequately reflect the terminology used in the North American motor vehicle industry and proposes to use the expression “crossover vehicles” (see subparagraph 7.5 above). As the Secretariat is not sure whether this expression is also used in other parts of the world, it has been placed in square brackets in the draft amendments. The Committee is invited to express its views as to whether the reference to the term “crossover” should be inserted in the draft amendments.
21. Finally, as to the Canadian proposal for the deletion of the reference to “certain pick-up vehicles” from the introductory paragraph of the draft amendments to the Explanatory Note to heading 87.03 (see subparagraph 7.6 above), the Secretariat would like to point out that the Committee in the past had classified a double-cab “pick-up” vehicle in heading 87.03 (see Classification Opinion 8703.23/2). The Committee is invited to rule on whether the expression “certain pick-up vehicles” should be deleted from the proposed amendments.

III. CONCLUSIONS

22. Taking into account the revised proposal by the United States and the comments by Mexico, Canada and the Russian Federation, the Committee is invited to consider the draft amendments to the Explanatory Notes to headings 87.03 and 87.04 which are set out in the Annex to this document, and, specifically, to rule on the issues identified in the underlined texts in paragraphs 12 to 21, above.
23. On the basis of the Committee’s conclusions, the Secretariat could present the draft texts for examination by the next preessional Working Party.

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DRAFT AMENDMENTS TO THE EXPLANATORY NOTES
TO BE MADE BY CORRIGENDUM

Page 1547. Heading 87.03.

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 [typically have a gross vehicle weight rating of approximately 5 tonnes or less and which] (**US**) 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 [variously] (**CAN**) [commonly] (**SEC**) known as [“multipurpose”] (**US**) [“crossover”, “multipurpose” or “dual use”] (**CAN**) [“multipurpose” or “dual-use”] (**SEC**) vehicles (e.g., van-type vehicles, sports utility vehicles [,certain pick-up vehicles] (**SEC**)). The following [criteria] (**US**) [features] (**SEC**) are indicative of the design characteristics generally applicable to the vehicles which fall in this heading :

- [(a) Absence of a separate cargo bed;] (**CAN**)
- (b) Presence of permanent seats with safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) for each person or the presence of 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;
- (c) Presence of rear windows along the two side panels;
- (d) Presence of sliding, swing-out or lift-up door or doors, with windows, on the side panels [or in the rear] (**SEC**);
- (e) Absence of a permanent panel or barrier between the area for the driver and front passengers and the rear area that [is designed] (**US**) [may be used] (**SEC**) for the transport of both persons and goods;
- (f) [Presence of comfort features and interior finish and fittings throughout the vehicle interior that are associated with the passenger areas of vehicles] (**CAN**) (e.g., floor carpeting, ventilation, interior lighting, ashtrays, etc.).”

Insert the following new third paragraph :

“The classification of certain motor vehicles in this heading [, typically vehicles having a gross vehicle weight rating of approximately 5 tonnes or less,] **(US)** is determined by 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 either a separate closed rear area or an open rear area normally used for the transport of goods [but may have rear bench-type seats that are without safety restraints and that fold flat against the sides to permit full use of the rear platform for the transport of goods] **(US)** [but may have seats for the transport of persons as well] **(SEC)**. Included in this category of motor vehicles are those [variously] **(CAN)** [commonly] **(SEC)** known as [“crossover”] **(CAN)** “multipurpose” or “dual-use” vehicles (e.g., van-type vehicles, [double-cab] **(CAN)** pick-up vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading :

- (a) Presence of a cargo bed;] **(CAN)**
- (b) [Presence of rear seating that lacks safety restraints for passengers and is designed to collapse or fold against the sides in order to allow full use of a flat platform or floor for the transport of goods;] **(US)** [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 the rear floor (van-type vehicles) or a separate platform (double-cab pick-up vehicles) for the transport of goods.] **(SEC)**
- (c) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles [,including double-cab pick-up vehicles] **(US)**);
- (d) [Absence of rear windows along the two side panels] **(US)** [Absence of rear windows along the two side panels; 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] **(SEC)** (van-type vehicles);
- (e) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;
- (f) [Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles] **(CAN)** [Absence, in the area behind the driver and front passengers, of comfort features and interior finish and fittings similar to that found in passenger vehicles] **(SEC)** (e.g., floor carpeting, ventilation, interior lighting, ashtrays, etc.).”