



HARMONIZED SYSTEM
COMMITTEE

NC0473E1

-
28th Session

O. Fr.

Brussels, 25 September 2001.

CLASSIFICATION OF A REINFORCEMENT GRID CALLED "FORTRAC 35/35-40"

(Item VII.12 on Agenda)

Reference documents :

NC0318E1
NC0340E2, Annex H/10 (HSC/26 – Report)
NC0395E1
NC0430E2, Annex H/12 (HSC/27 – Report)

I. BACKGROUND

1. At its 27th Session, the Harmonized System Committee decided, by 31 votes to 4, to classify the "FORTRAC 35/35-40" reinforcement grid in Chapter 39, by application of Note 2 (a) (3) to Chapter 59 (see Annex H/12 to Doc. NC0430E2 – Report).
2. The question still to be examined by the Committee is the appropriate classification within Chapter 39. At the last session, one delegate considered that the product at issue corresponded to Note 10 of the said Chapter and should consequently be classified in heading 39.21, rather than in heading 39.26 which is a residual heading.

II. SECRETARIAT COMMENTS

3. At the time of publication the Secretariat had received no additional information concerning this issue from administrations.
4. Note 10 to Chapter 39 defines the expression "plates, sheets, film, foil and strip" as used in the texts of headings 39.20 and 39.21.
5. It stipulates that the above expression "applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of rectangular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use)".

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6. The Secretariat agrees with the US Administration that one must initially ensure that a product cannot actually be classified in any of the first headings of a Chapter before envisaging its classification in a residual heading.
7. The Secretariat had questioned the application of Note 10 and the classification of the product at issue in heading 39.21 and concluded that this article could not be considered a plate, sheet, film, foil or strip within the meaning of the said Note (see Doc. NC0318E1, paragraph 7).
8. The French encyclopaedia "Le Grand Larousse Universel" defines the term "sheet" as : (1) "A thin plate made of metal, minerals, cardboard, etc."; (2) "A level plastic surface with a conventional thickness of between 0.2 and 2 mm". The term "plate" is defined as "a sheet of a given material which is solid, broad and thin, yet rigid" [translation].
9. According to these definitions, plates and sheets are characterized by the fact that they comprise a level, flat and solid surface.
10. Note 10 to Chapter 39 nevertheless extends this definition by indicating that the products of headings 39.20 and 39.21 can be printed or otherwise surface-worked and the Explanatory Notes to these headings (page 619) specify that they may, for example, be polished, embossed, coloured, merely curved or corrugated.
11. The same Explanatory Notes also stipulate that "plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of headings 39.18, 39.19 or 39.22 to 39.26".
12. The Secretariat feels that given the specific design of the reinforcement grid at issue, which can be described as a "fabric", it does not correspond to one of the essential characteristics of plates or sheets insofar as it does not have a solid surface given that it comprises open parts of sizeable dimension not containing polymer coating.
13. Likewise, a plastic sheet or plate containing holes or perforations covering a varying proportion of its surface would be excluded from headings 39.20 or 39.21, by application of Note 10 to Chapter 39, perforation being considered more than mere surface-working.
14. For the above reasons, the Secretariat feels that the "FORTRAC 35/35-40" reinforcement grid cannot be considered a plate, sheet, film, foil or strip within the meaning of Note 10 to Chapter 39 and, in the absence of a more specific heading, should be classified in heading 39.26.

III. CONCLUSIONS

15. The Committee is invited to rule on the classification within Chapter 39 of the "FORTRAC 35/35-40" reinforcement grid, taking account of the Secretariat's comments in paragraphs 3 to 14 above, and to indicate what further action should be taken in respect of this matter.
