



HARMONIZED SYSTEM
COMMITTEE

NC0695E1

-
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O. Eng.

Brussels, 15 April 2003.

USE OF THE TERMS “HYGIENIC”, “SANITARY” AND “TOILET”

(Item VIII.9 on Agenda)

Reference documents :

NR0224E1 (RSC/25)
NR0265E2, Annex C/14 (RSC/25 – Report)
NC0579E1 (HSC/29)

NC0590E2, Annex IJ/17 (HSC/29 – Report)
NC0640B1 (HSC/30)
NC0655E2, Annex H/15 (HSC/30 – Report)

I. BACKGROUND

1. At its 25th Session, the Review Sub-Committee discussed the proposal of the **Egyptian** Administration to provide separate provisions for hygienic articles of plastics in the Harmonized System. The Sub-Committee agreed to request the HS Committee to clarify the scope of headings 39.22, 39.24 and 39.26, in the context of the possible misalignment of the relevant English and French texts concerning the use of the terms “hygienic”, “toilet” and “sanitary”. Administrations were requested to submit comments in this respect to the Secretariat.
2. By its letter of 12 November 2002, the **EC** presented a note concerning the use of the terms “hygienic”, “toilet” and “sanitary”, which was circulated during the Committee’s 30th Session as a non-paper.
3. At the 30th Session, the **EC** Delegate explained that there was no need to amend the French text of heading 39.24, since the scope was aligned in both language versions. He suggested drafting a non-exhaustive list of commodities classified in heading 39.24, which could be based on the list of articles referred to in paragraph 11 of Doc. NC0579E1 (HSC/29). He also suggested considering the matter further at the Committee’s next session on the basis of a document to be prepared by the Secretariat, indicating the various options, i.e., amendments to the legal texts or status quo.
4. Another delegate argued, however, that some of the articles listed in the Secretariat’s document might not be covered by the English term “toilet”, as used in heading 39.24.

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Consequently, there seemed to be a misalignment between the two versions. He suggested reporting this to the Review Sub-Committee and leaving any further action to that Sub-Committee.

5. Finally, the Committee agreed to continue the study of the question at its next session, focussing on the classification of the products listed in paragraph 11 of Doc. NC0579E1 with a view to seeing whether or not the legal texts needed to be amended.
6. The note presented by the **EC** is reproduced below. It is to be noted that references to “the working document” in this note are references to Doc. NC0579E1.

II. NOTE FROM THE EC

7. “This note is presented within the framework of the study currently being prepared by the HS Committee on the scope and correspondence of two versions of the use of the terms “hygienic”, “toilet” and “sanitary” (FR : “hygiénique”, “toilette”, “sanitaire”) in the Explanatory Notes and the Nomenclature annexed to the Harmonised System Convention.
8. The **EC** has carried out a detailed study of the working document in question, which will be examined at the HSC's 30th Session.
9. The findings of this study are as follows :
 1. We agree with the Secretariat's observations in paragraph 11 and believe that only the scope of heading 39.24 could cause a problem.
 2. However, we do not consider it appropriate to remove the term “hygiène” from the French wording of heading 39.24. In accordance with the argument set out in paragraph 4 of the working document, it would appear that the definition of the word “toilet” in English is much broader than “toilette” in French. As far as we can gather from the text, the English term “toilet” covers the definitions of French terms “toilette” and “hygiène”. Therefore, it seems that the present linguistic versions correspond perfectly. The removal of the term “hygiène” from the French version could lead not only to a reduction in the scope of heading 39.24 (French version), but also to a mismatch between the two language versions, since the **EC** considers the current terms to correspond.
 3. We would prefer to see a mention in an Explanatory Note of the articles which could be problematic, a non-exhaustive list of which is contained in paragraph 11 of the document, explaining that some of them could cause classification problems due to the potential interpretation of the legal wording of heading 39.24 (this is the case for example with bottle teats or dummies classified on the basis of the French text in heading 39.24).
 4. As regards paragraph 13 of the document, the **EC** does not share the same concerns as the Secretariat about the possible non-correspondence in heading 39.22, since the two language versions referring to articles similar to those listed in the first part of the text.”

II. SECRETARIAT COMMENTS

10. To facilitate discussions, the Secretariat has reproduced below paragraphs 3 to 14 of Doc. NC0579E1, which read as follows :

3. "It appears from this search that the terms are being used indiscriminately. Below is a list of the combinations English/French, including the places where they were found in the Nomenclature :

(i) **hygiene** (English) = **hygiène** (French)

(a) Heading 33.06

English : preparations for oral or dental hygiene
French : préparations pour l'hygiène buccale ou dentaire

(b) Heading 40.14

English : hygienic articles
French : articles d'hygiène

(c) Heading 70.17

English : hygienic glassware
French : verrerie d'hygiène

(ii) **sanitary** (English) = **sanitaires** (French)

(a) Heading 48.18

English : sanitary purposes
French : fins sanitaires

(b) Heading 69.10

English : sanitary fixtures
French : usages sanitaires

(iii) **sanitary** (English) = **hygiénique** (French)

(a) Subheadings 4818.40 and 5601.10

English : sanitary towels and tampons
French : serviettes et tampons hygiéniques

(b) Subheadings 4818.40 and 5601.10

English : sanitary articles
French : articles hygiéniques

(iv) **sanitary** (English) = **sanitaires ou hygiéniques** (French)

Heading 39.22

English : sanitary ware
French : usages sanitaires ou hygiéniques

(v) **sanitary** (English) = **hygiène ou de toilette** (French)

(a) Heading 48.03

English : sanitary purposes
French : usages d'hygiène ou de toilette

(b) Heading 48.18

English : sanitary articles
French : usages de toilette, hygiéniques

(c) Headings 73.24, 74.18 and 76.15, and subheadings 7418.20 and 7615.20

English : sanitary ware
French : articles d'hygiène ou de toilette

(vi) **toilet** (English) = **toilette** (French)

Chapter 11, Note 1 (f), Chapter 15, Note 1 (e), Chapter 25, Note 2 (d) and Chapter 33, title
 English : toilet preparations
 French : produits de toilette

(vii) **toilet** (English) = **hygiénique** (French)

Subheading 4818.10
 English : toilet paper
 French : papier hygiénique

(viii) **toilet** (English) = **hygiène ou de toilette** (French)

(a) Heading 39.24
 English : toilet articles
 French : articles d'hygiène ou de toilette

(b) Headings 69.11 and 69.12
 English : toilet articles
 French : articles d'hygiène ou de toilette

4. The descriptions listed below have been taken from the “*Concise Oxford Dictionary*” and “*Le Petit Larousse Illustré 2002*”.

(Concise Oxford Dictionary – Tenth edition, completely revised)

hygiene = conditions or practices conducive to maintaining health and preventing disease, especially cleanliness
hygienic = promoting or conducive to hygiene; sanitary
sanitary = 1. of or relating to conditions affecting hygiene and health; 2. hygienic
toilet = [1. . . .]; 2. the process of washing oneself, dressing, and attending to one's appearance; 3. the cleansing of part of a person's body as a medical procedure

(Le Petit Larousse Illustré 2002)

hygiène = 1. partie de la médecine étudiant les moyens individuels ou collectifs, les principes et les pratiques qui visent à préserver ou favoriser la santé ; 2. fait de respecter ces principes ; 3. [. . .] ; 4. ensemble des soins apportés au corps pour le maintenir propre ; 5. ensembles des conditions sanitaires
hygiénique = 1. relatif à l'hygiène ; 2. bon pour la santé ; 3. qui a trait à l'hygiène, à la propreté du corps, et partic. de ses parties intimes
sanitaire = (adj.) 1. relatif à la conservation de la santé collective ; 2. relatif aux installations et appareils destinés aux soins de propreté, d'hygiène
 = (n.m. pl.) ensemble des installations de propreté (lavabos, water-closets, etc.) d'un lieu
toilette = 1. action de laver, de coiffer, d'habiller ; ensemble des soins de propreté du corps ; 2. action de nettoyer qqch, d'en rafraîchir l'aspect ; 3. ensemble des vêtements et des accessoires utilisés par une femme pour s'habiller, se parer ; 4. meuble garni de divers objets destinés aux soins de propreté et de parure

5. From the descriptions given above, it should be clear that there is a close relation between the three terms used, and that, in particular, the terms “sanitary” and “hygienic” can be used, to a certain extent, indiscriminately in both language versions. However, when referring to a group of commodities, one term may be more appropriate than the other. In addition, each language follows its own rules and customs, and what is the appropriate term in one language, might not be the appropriate one in the other.

6. Following the above-given explanations, the Secretariat would like to offer the following comments with respect to the headings referred to in paragraph 3 above, other than those where the English terms “hygienic”, “sanitary” and “toilet” are used as translation of the French terms “hygiène”, “sanitaire(s)” and “toilette”, respectively.

Heading 39.22

7. If the Committee agrees with the hypothesis that the terms “sanitary” and “hygienic” can be used synonymously in both languages, the heading would have the same scope in the two language versions. It should be noted, however, that the heading is restricted to those articles which are “similar” to the ones referred to in the heading text.

Headings 39.24, 69.11 and 69.12

8. According to the Explanatory Notes to headings 39.24, first paragraph, item (D), and 69.12, second paragraph, item (D) (which applies *mutatis mutandis* to heading 69.11), the term “toilet articles” (French : “articles d’hygiène ou de toilette”) is used for such articles for bathrooms, toilets or kitchens (French : “articles similaires destinés à garnir les salles de bain, cabinets de toilette ou cuisines”). Following this reference in the Explanatory Notes, it appears that the term “hygiène” in the French version has been used in the meaning of “ensemble des soins apportés au corps pour le maintenir propre”, which is synonymous with the French term “toilette” (= “ensemble des soins de propreté du corps”) (see paragraph 4 above).

Headings 48.03 and 48.18, and subheading 5601.10

9. The Secretariat believes that the term “sanitary” in the English version is used as a synonym for “hygienic”, thus having the same scope as the term “hygiénique” in the French version of these headings. The term “toilette” in the French version of headings 48.03 and 48.18 could be considered as an amplifier of the term “hygiénique”, or as an addition necessary in this context (i.e., when referring to certain types of paper).

Headings 73.24, 74.18 and 76.15, and subheadings 7418.20 and 7615.20

10. Here, the Secretariat also considers that the terms used in the English and French versions of these headings and subheadings are interchangeable, and that, consequently, the scope of both versions is the same.
11. In conclusion, it appears that the only problem that could exist is with regard to the scope of heading 39.24 (English : “toilet articles”; French : “articles d’hygiène ou de toilette”), given the use of the term “hygiène” in the French version. This term could be interpreted to cover the articles identified by the **United States** and **Canada** under heading 39.26 (i.e., nursing nipples and pacifiers; ice bags; douche bags, enema bags, colostomy bags, hot water bottles, and fittings therefor; invalid and similar nursing cushions; crutch tips and grips; dress shields; finger cots; pessaries; prophylactics; sanitary belts; bulbs for syringes; syringes (other than hypodermic syringes) and fittings therefor) (paragraphs 18 and 19 of Doc. NR0224E1). The Committee is invited to decide whether or not the French and English texts of heading 39.24 would cover these commodities.
12. If the Committee decides that heading 39.24 (in both versions) would not cover these commodities, the Secretariat suggests deleting the term “hygiène” from the French text of that heading, thus avoiding confusion in future. As an interim solution, the Explanatory Note to that heading may be amended to reflect the Committee’s decision.
13. Having said this, the Secretariat considers that, in order to avoid any misunderstanding in the future concerning the scope of any of the terms used, it might be appropriate to review those headings or subheadings where there is a misalignment in the number of terms used (for example, heading 39.22 (English : “sanitary”, French : “sanitaires ou hygiéniques”). Administrations are invited to provide their views on this point.
14. Finally, since the proposal to insert a reference to hygienic articles in the structured nomenclature to heading 39.26, is apparently intended to cover the same category of products classified in heading 40.14, the Secretariat would like to draw the Committee’s attention on the fact that the wording of that heading not only refers to “hygienic”, but also to “pharmaceutical”, without making any distinction between the two terms at the subheading level or in the Explanatory Note.”

11. The Secretariat understands from the discussions during the Committee's 30th Session, that the sole problem might be whether the English and French texts of heading 39.24 are aligned, and whether or not the articles referred to in paragraph 11 of Doc. NC0579E1 are classifiable in that heading.
12. According to the **EC**, the term "toilet" in English is much broader than the term "toilette" in French, and would cover the aggregate of the two French terms "toilette" and "hygiène". Consequently, the scope of heading 39.24 (and of headings 69.11 and 69.12) is the same in both language versions. The Secretariat will comment on the wording of heading 39.24 after having examined the possible classification of the products listed in paragraph 11 of Doc. NC0579E1.
13. The products at issue, which were mentioned by the **United States** and **Canada**, concern : nursing nipples and pacifiers; ice bags; douche bags, enema bags, colostomy bags, hot water bottles, and fittings therefor; invalid and similar nursing cushions; crutch tips and grips; dress shields; finger cots; pessaries; prophylactics; sanitary belts; bulbs for syringes; syringes (other than hypodermic syringes) and fittings therefor, all of plastics.
14. In considering the possible classification of these articles, the Secretariat would like to draw the Committee's attention to heading 40.14, which covers "hygienic or pharmaceutical articles" (French : "articles d'hygiène ou de pharmacie"). The Explanatory Note to that heading lists a number of articles, some of them being the same as those to be classified. The Secretariat would also like to draw the Committee's attention to the fact that the descriptions of the commodities given in paragraph 13 above, stem apparently from American English. Where appropriate, the Secretariat has added the British English synonym in brackets; where possible taken from the Explanatory Note to heading 40.14.
Nursing nipples (or "teats"); finger cots (or "finger-stalls")
15. The Secretariat would be inclined to consider these articles as articles for maintaining health or preventing disease, which would categorise them as "hygienic articles" (see paragraph 10.4 above). However, none of the descriptions of the term "toilet" given in paragraph 10.4 covers this kind of article. Consequently, heading 39.24 should be ruled out if the classification were to be based on the English version and classification in heading 39.26 would seem appropriate.
16. However, when considering the wording of heading 39.24 in the French version, one may conclude that these commodities are covered by that heading, since the heading refers to "articles d'hygiène". In this context it is to be noted that the expression "hygienic" is to be found in both language versions of heading 40.14 and that they are listed in the Explanatory Note to that heading.
17. The position expressed above, is based on the Secretariat's conclusion that the commodities at issue are used to maintain health or to prevent disease. This description would fit with the interpretation of the terms "hygienic" and "hygiénique" in English and French, respectively, as reproduced in paragraph 4 of Doc. NC0579E1 (see paragraph 10 above). Since the commodities referred to above are not related to "the cleansing of part of a person's body", a categorisation based on that description as "toilet articles" would be inappropriate.

Pacifiers

18. The Secretariat would be inclined to classify pacifiers (or “baby’s dummies”) of plastics, in heading 39.26, since they appear not to fall within the expressions “toilet articles” in the English version or “articles d’hygiène ou de toilette” in the French version.

Ice-bags; douche bags, enema bags, colostomy bags, hot-water bottles, and fittings therefor; invalid and similar nursing cushions; pessaries; prophylactics (or “sheath contraceptives”); bulbs for syringes

19. The Secretariat would consider this group of commodities to be pharmaceutical articles (as that term is used in heading 40.14), rather than hygienic or toilet articles. Since pharmaceutical goods are not mentioned in one of the headings of Chapter 39, they are to be classified in heading 39.26, if of plastics.

Crutch tips and grips

20. These articles are parts (or accessories) of crutches, which are mentioned in heading 90.21. By virtue of Note 2 (b) to Chapter 90, parts (or accessories) suitable for use solely or principally with a particular kind of instrument or apparatus of Chapter 90, are to be classified with these articles. That being the case, crutch tips and grips of plastics are articles of Chapter 90 and consequently excluded from heading 39.26 or any other heading of Chapter 39 by virtue of Note 2 (r) to that Chapter.

Dress-shields

21. Dress-shields are mentioned in the Explanatory Note to heading 40.15, which includes clothing accessories. The Secretariat would, therefore, classify these products, if of plastics, in heading 39.26.

Sanitary belts

22. The Secretariat understands that sanitary belts are used by women to hold disposable sanitary towels. It has some difficulty, however, to see that these articles could be classified in Chapter 39, since samples shown on the Internet (i.e., on the Web site of a museum) are apparently of textile material and not of plastics. In addition, it has some doubts whether such articles are still being traded. The **United States** or **Canada** may wish to provide more information vis-à-vis the type of commodity at issue, and on the question whether it is still being traded.

Syringes (other than hypodermic syringes) and fittings therefor

23. The Secretariat understands that the syringes to be mentioned in Chapter 39, concern the instruments which are not used in medical, surgical, dental or veterinary sciences, since such instruments are classified in heading 90.21 (see, for example, item (I) (A) (15) of the Explanatory Note to heading 90.21, on page 1804). That being the case, the Secretariat would suggest referring to the syringes of Chapter 39 as “syringes, other than those of heading 90.21”. With respect to their classification, the Secretariat would suggest heading 39.26.

24. From the foregoing it appears that only the classification of teats and finger-stalls in heading 39.24 could be problematic, since all other commodities referred to in paragraph 11 of Doc. NC0579E1 appear to fall in heading 39.26 or elsewhere in the Nomenclature. As

indicated in paragraphs 15 to 17 above, the Secretariat would classify teats and finger-stalls in different headings, depending on the language version used (i.e., in heading 39.26 when using the English language version and in heading 39.24 when using the French language version).

25. With respect to the terms used in the two language versions of heading 39.24, the Secretariat understands that the term “hygiène” as used in the French version, when read in conjunction with the Explanatory Note to that heading, could be interpreted to mean “body care to maintain cleanliness”, which is synonymous with the French term “toilette” (= “general cleanliness care for the body”) (see also paragraph 10.4 above). However, legal texts should be read and interpreted as they appear, which means that the term at issue could also be interpreted to refer to such articles which are used in maintaining health, which meaning is not covered by the term “toilet”, either in the English or in the French version. The Secretariat, therefore, disagrees with the **EC** that the scope of heading 39.24 is the same in both language versions (see paragraph 9.2 above).
26. The Secretariat takes the view that an amendment to the text of heading 39.24 is necessary to align the two language versions, thus guaranteeing a uniform scope. This amendment could consist of an alignment of the English version on the French, by inserting a reference to “hygienic articles”.
27. This might, however, cause another potential problem with respect to commodities which are not hygienic but pharmaceutical (which are grouped together in heading 40.14, if of rubber). Since modern technology makes it possible to also produce these articles from plastics, it might be worthwhile to group similar articles of plastics in Chapter 39 as well. Therefore, if the Committee agrees to an amendment to the text of heading 39.24, the Secretariat would be in favour of replacing the expression “toilet articles” by “toilet, hygienic or pharmaceutical articles” in the English version and the expression “articles d’hygiène ou de toilette” by “articles d’hygiène, de toilette ou de pharmacie” in the French version. Such draft amendment could be considered by the Review Sub-Committee.
28. If the Committee, on the other hand, decides not to suggest an amendment to the legal text, the Secretariat suggests amending the Explanatory Notes of the headings at issue, with a view to reflecting the classification of the various articles mentioned in paragraphs 15 to 23 above. Draft amendments could be prepared by the Secretariat, once the Committee has taken a decision on the classification of the articles at issue.
29. Having said this, the Secretariat has some difficulty in understanding the **EC** suggestion in paragraph 9.3 above to create a non-exhaustive list of commodities, explaining that some of them could cause classification problems due to the possible different interpretation of the wording of heading 39.24. If a list of commodities is to be inserted in the Explanatory Note to heading 39.24 or any other heading, the Secretariat would prefer to create this list on the basis of the classifications agreed upon by the Committee. However, the **EC** may wish to clarify this point.
30. Finally, the results of the discussions should be reported to the Review Sub-Committee with a view to finalising the discussions on the **Egyptian** proposal to provide separately for hygienic articles of plastics in Chapter 39.

III. CONCLUSIONS

31. The Committee is invited to examine the classification of the articles mentioned by the **United States** and **Canada** in paragraph 11 of Doc. NC0579E1 (see paragraph 10 above) and to express its view on whether or not legal texts or Explanatory Notes need to be amended, taking into account the observations of the Secretariat in paragraphs 10 to 30 above.
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