

NOTE BY THE EUROPEAN COMMUNITY

(reproduced in paragraphs 2 to 9 of Doc. NC0713E1)

"The EC wishes to ask the HS Committee to consider whether the Explanatory Notes to headings 61.01 (61.02) and 61.10 are inconsistent with the legal description of heading 61.10 of the Nomenclature annexed to the HS Convention.

Waistcoats are included without any qualification in the description of heading 61.10, and it could therefore be deduced, by direct application of General Rule 1 for the interpretation of the Nomenclature that knitted or crocheted waistcoats fall under that heading. However, the last paragraph of the Explanatory Note for this heading states that "The heading also excludes padded waistcoats of heading 61.01 or 61.02." (French version : "sont également exclus les gilets matelassés des n°s 61.01 ou 61.02"). At the same time, the Explanatory Notes to heading 61.01 state that the heading includes padded waistcoats. The Explanatory Notes to heading 61.01 apply *mutatis mutandis* to articles of heading 61.02.

One might deduce that these Explanatory Notes conflict with the legal description of the Nomenclature and incorrectly restrict the scope of heading 61.10 and broaden the scope of headings 61.01 and 61.02.

If the Committee concurs with this view, the parts of the Explanatory Notes found to be incorrect would be deleted. One might also consider drafting a note to 61.10 indicating that "padded waistcoats" are included under that heading and that heading only.

However, the Committee may consider that the "padded waistcoats" ("*gilets matelassés*") to which the existing Explanatory Notes refer are not real waistcoats ("*gilets*"), nor the similar articles referred to in the description of heading 61.10, but rather articles similar to the anoraks, wind-cheaters and wind-jackets referred to in the descriptions of headings 61.01 and 61.02. The word "similar" appears in the description of all three headings.

In this connection we would point out that according to the study we have carried out, the French word "*gilets*" includes garments with and without sleeves, whereas the English word "waistcoats" refers only to garments without sleeves.

In any case, if the Committee accepts the second hypothesis, the existing Explanatory Notes would be entirely compatible with the present legal description of heading 61.10 and the Committee could simply confirm that the Explanatory Notes are appropriate and/or clarify them by adding a new sentence confirming the characteristics of "padded waistcoats" ("*gilets matelassés*").

The EC would be grateful if the HS Committee would give its views on the issue we have been studying and state whether it considers the present Explanatory Notes, which exclude "padded waistcoats ... knitted or crocheted" ("*gilets matelassés en bonneterie*") from heading 61.10 and classify them under headings 61.01 and 61.02, to be appropriate."
