



HARMONIZED SYSTEM  
COMMITTEE

-  
32<sup>nd</sup> Session  
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NC0767E1  
(+ Annex)

O. Fr.

Brussels, 16 October 2003.

POSSIBLE AMENDMENT OF THE LEGAL TEXT  
AND EXPLANATORY NOTE TO HEADING 90.21

(Item VI.16 on Agenda)

Reference documents :

NR0395E1 (RSC/27)  
NR0400E3 (RSC/27 – Report)  
NC0726E1 (HSC/31)  
NC0730E2, Annex IJ/11 (HSC/31- Report)

I. BACKGROUND

1. At its 27<sup>th</sup> Session (March 2003), the Review Sub-Committee held a preliminary exchange of views on the **EC** proposal for a possible amendment of the structured nomenclature and the Explanatory Note to heading 90.21. Following these discussions, the Sub-Committee agreed to deal with this issue in two stages :
  - (1) to submit to the Harmonized System Committee, at its May 2003 (31<sup>st</sup>) Session, the problem regarding the alignment of the English and French versions of the Explanatory Notes, which was not to be construed as a broadening of the scope of the legal text of the heading;
  - (2) to study the possibility of amending the legal texts at the Review Sub-Committee's September 2003 (28<sup>th</sup>) Session, in the light of whatever opinions and comments might emerge in the course of the HS Committee's discussions in May.
2. At its 31<sup>st</sup> Session, the Committee examined the problem in the light of Doc. NC0726E1. At the end of its discussions, it agreed to return to the question at its next session and instructed the Secretariat to prepare a new document which was to deal with the matter in two stages, namely : (1) a proposed amendment to the existing Explanatory Note to heading 92.21, aimed at aligning the English and French versions; and (2) a draft amendment to the legal text, taking into account the **EC** proposal, to make this heading more logical and improve its structure.

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## II. SECRETARIAT COMMENTS

3. The Secretariat notes that the problem of the alignment of the French and English versions of heading 90.21 and subheading 9021.10 was originally raised during the passage from the CCCN to the HS Nomenclature. In fact, while the Harmonized System was being drafted, the two versions of CCCN heading 90.19, which was to become HS heading 90.21, were amended to bring them into alignment.

4. The same problem was again raised during the preparatory work on the 2002 version of the Harmonized System, when an effort was made to establish the precise scope of the expression "orthopaedic appliances", as currently defined in Note 6 to Chapter 90. Finally, it was also brought up at the HSC's 25<sup>th</sup> Session, during the examination of the question of the classification of lumbar support belts, especially in connection with the scope of the English term "appliances" translated into French as "articles et appareils" (Doc. NR0120E1/RSC/22, September 2000, and NC0430E2, Annexes F, P/4, and Q/21).

5. This question has now given rise to three sets of problems :

(1) The four-digit heading seems to be differently worded and hence appears not to have the same scope in English and French, reading as follows :

English : "Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances";

French : "Articles et appareils d'orthopédie, y compris les ceintures et bandages médico-chirurgicaux et les béquilles; attelles, gouttières et autres articles et appareils pour fractures".

At this level, the French text appears to be more detailed than the English which lacks the equivalent of the term "gouttières" ("cradles") and uses the single word "surgical" to render the French expression "médico-chirurgicaux" ("medico-surgical").

(2) In subheading 9021.10, the English text "orthopaedic or fracture appliances" is translated into French as "appareils d'orthopédie ou pour fractures". This contradicts the decision taken by this Committee at its 27<sup>th</sup> Session, on the basis of which, as noted above, and within the context of subheading 9021.10, the English term "appliances" is equivalent to the French "articles et appareils".

In this connection, it is also necessary to consider the meaning to be given to the expression "fracture appliances" as opposed to the orthopaedic appliances defined in Note 6 to Chapter 90.

(3) the relevance of the proposal made by the **EC** to add a phrase to the present text of heading 90.21 and subheading 9021.10 to arrive at the following new wording :

### **Heading 90.21**

English : "Splints and other appliances for the treatment of fractures, dislocations and joint injuries".

French : "Attelles, gouttières et autres articles et appareils pour fractures, luxations ou lésions articulaires".

**Subheading 9021.10**

English : Orthopaedic appliances or appliances for the treatment of fractures, dislocations and joint injuries».

French : Articles et appareils d'orthopédie ou pour fractures, luxations ou lésions articulaires".

6. The **EC** bases its proposal on technical progress, which now makes it possible to use the same appliances for fractures, dislocations and joint injuries, and on elements drawn from the Explanatory Notes (2<sup>nd</sup> paragraph of the Note to heading 90.21, page 1815) and from Docs. NR0165E2, Annexes C/8 and E/4, and NC0430E2, Annexes F and P/4).
7. The Secretariat notes that, in their present form, the two versions of the **EC** proposal do not appear to be correctly aligned since the French text uses the conjunction "ou" ("or") which is not the equivalent of the conjunction "and" used in the English version.

### III. SECRETARIAT PROPOSALS

#### Alignment of the legal text

8. The alignment of the present text of the four-digit heading does not pose any particular problem if it is accepted that the English word "surgical" can be rendered in French by "médico-chirurgical". However, the word "cradles", the translation of the French "gouttières", should be added to the second part of the English text after "splints", to ensure that the French text is no broader in scope than the English, it being understood, as noted above and in accordance with this Committee's decision, that the English term "appliances" should be rendered in French by "articles et appareils".
9. However, there are still questions that remain unanswered :
- (1) Why does the four-digit heading mention several specific orthopaedic and fracture appliances, whereas subheading 9021.10 lumps them together under the generic expression "Orthopaedic and fracture appliances" ?
  - (2) What criterion can be used to distinguish orthopaedic appliances, as defined in Note 6 to Chapter 90, from fracture appliances ?
10. Assuming that the English term "appliances" has to be translated into French as "articles et appareils", the current French version of subheading 9021.10 should be made consistent with both the four-digit text and the English version. To ensure the correct alignment of the two versions, it should read as follows :
- "9021.10 - Articles et appareils d'orthopédie ou pour fractures".

11. According to the technical documentation consulted by the Secretariat, as listed in paragraph 8 of Doc.NC0726E1, the term "orthopaedics", comes from two Greek words "orthos = straight" and "paedos = child". It designates a branch of medicine and surgery concerned with the study and treatment, by open operation or otherwise, of ailments of the locomotor system and, in some cases, the spinal column. In children, orthopaedics deals mainly with fractures, dislocations and deformities, whereas in adults it is chiefly concerned with the treatment of traumatic dislocations and fractures of various bones, by a non-surgical procedure (plaster cast, extension) or by surgical reduction.
12. The Encyclopaedia LAROUSSE UNIVERSEL defines fracture as the sudden breaking of a bone, following a violent trauma in the healthy adult or sometimes following a comparatively insignificant trauma in the elderly or those suffering from certain diseases. A dislocation, on the other hand, is the displacement or rather disarticulation of the ends of the two bones forming a joint, resulting in a loss of normal contact between the two articulated surfaces. Thus, both fractures and dislocations are of traumatic origin, whereas this is not necessarily the case with joint injuries.
13. In treating fractures and dislocations the aim is to restore the affected limbs to their normal condition by means of the following two procedures :
  - (1) reduction : this involves, in the case of fractures, setting the two edges of the broken bone (bone fragments) in perfect alignment so that the bone regains its normal shape and, in the case of dislocations, putting the two bones back in place by means of external (manual) or surgical manoeuvres;
  - (2) retention : immobilization of the fractured or dislocated limb until a bony callus has formed (case of fractures) or until the ligaments have cicatrized (case of dislocations). Retention may be orthopaedic (by plaster cast, for example) or surgical, with the use of external or internal hardware (screws, screw plates, nails, metal clips, etc.).
14. It follows that orthopaedic appliances, as defined in Note 6 to Chapter 90, can be used both for treating traumatic fractures and dislocations and in other cases, for example, to correct a deformity. This tends to support the EC's position, according to which the same appliances are used for fractures and dislocations.
15. However, the Nomenclature would benefit from a legal note defining what is meant by "fracture appliances" and distinguishing them, on the basis of precise criteria (in addition to their end use), from orthopaedic appliances within the meaning of Note 6 to Chapter 90.
16. Nevertheless, given the possibility of confusion, the Secretariat cannot endorse the EC proposal to add to the text of heading 90.21 and subheading 9021.10 the expression "dislocations or joint injuries" for the following reasons :
  - (i) the word "injury" is a generic term denoting any damage to the tissues and thus has a broader scope extending beyond the specific case of fractures and dislocations or even orthopaedic treatment in general, which deals only with the locomotor system;
  - (ii) joint injuries, of which there are a great many, may be caused both by trauma (fractures, sprains, twists, torn ligaments, etc.) and by immuno-induced attack, inflammation and metabolic disorders associated with tissue ageing.

17. It follows that not all joint injuries are treated solely through the use of fracture appliances within the meaning of heading 90.21; they can also be treated by other means (use of analgesics, anti-inflammatory drugs, etc.). The Secretariat concludes from these observations that the effect of the list given in the French version and the suggested addition to both versions would be to broaden the scope of this heading and subheading beyond that dictated by the legal text.

#### Alignment of the Explanatory Notes

18. As pointed out in Doc. NC0726E1, the present text of the Explanatory Notes to heading 90.21 does not appear to be correctly aligned in the two versions, especially when the first paragraph of Part II is taken into account. Thus, the French text includes :
- (i) a list of the various disorders covered by subheading 9021.10 more detailed than that in the English text;
  - (ii) a reference to the term "organes" ("organs") where the English speaks of "parts of the body";
  - (iii) a more complicated account of the uses of fracture appliances.
19. On the basis of the French version, the **EC** proposes that the English text be supplemented by adding the words "dislocations and joint injuries" so as to make the wording of the Explanatory Note correspond to the legal text.
20. The Secretariat acknowledges the existence of this lack of alignment, but has some reservations concerning the new wording proposed by the **EC**, because, as pointed out above, «injuries» is a generic term and joint injuries depend not only on the type of joint concerned (moveable, immoveable or mixed) but also on their origin (trauma, inflammation, etc.).
21. It emerged from the discussions at the Committee's 31<sup>st</sup> Session that joint injuries may be understood in the strict sense, as calling for the services of a specialist surgeon and the use of the appliances mentioned in heading 90.21 or, conversely, in general terms, as any kind of muscular injury, including those that can be treated simply by applying an elastic bandage of Section XI (Doc. NC0730E2, Annex IJ/11).
22. The Secretariat also wishes to remind the Committee that the word «organes» used in the French version was criticized at its 27<sup>th</sup> Session (Docs. 40.939 and 41.470) and that a suggestion was made that it be replaced by the expression "parties du corps", a translation of the English term "parts of the body", to make the Explanatory Notes to heading 90.21 more precise and align the two versions.
23. Accordingly, the Secretariat has reproduced below the proposals it formulated in paragraphs 18 to 21 of Doc.NC0726E1, which can be summarized as follows :

(1) to align the titles of Part II of the Explanatory Notes in the two versions as follows, for the sake of consistency with the legal text :

English : "Splints, cradles and other fracture appliances"

French : "Attelles, gouttières et autres articles et appareils pour fractures"

- (2) also to align the first paragraph of Part II of the Explanatory Notes on the basis of the English text, so that it reads as follows :

English : "Fracture appliances are used either to immobilize parts of limbs displaced as a result of fractures, dislocations and associated injuries (for extension or to protect them from external damage), or for setting fractures and dislocations."

French : "Les articles et appareils pour fractures servent soit à immobiliser les segments des membres déplacés à la suite de fractures, luxations et lésions associées (pour en permettre l'extension ou encore pour les protéger des atteintes extérieures), soit à réduire les fractures et les luxations."

This rewording makes it possible to introduce the following corrections :

- (i) to replace the controversial term "organes" by the expression "segments des membres déplacés", which corresponds to the English "parts of the body (limbs)";
- (ii) to delete, in the first line, after the expression "lésions articulaires", the words "des membres, de la poitrine, etc.", which have no equivalent in the English text;
- (iii) to introduce into the French version the conjunction "et" ("and") instead of "ou" ("or") because :
- the conjunction "ou", which in French indicates an alternative or equivalence, does not reflect the reality, according to which any fracture or dislocation is necessarily accompanied by other injuries manifested in pain, bruising, deformity, etc.;
  - the conjunction "et" ("and") was used at the same point in the French text of the CCCN Explanatory Note to heading 90.19 (page 1589), which became HS heading 90.21, and was only replaced during the passage from the CCCN to the HS (Docs. 29.027 and 28.830, Annex II);
- (iv) to substitute the expression "associated injuries" in place of "joint injuries" for greater clarity, since any fracture or dislocation will be accompanied by a number of associated injuries (vascular, neurological, cartilage, skin, etc.) which must be treated at the same time in order to return the fractured or dislocated limb to its original condition and, moreover, as pointed out above, joint injuries may arise not only as a corollary to a fracture or dislocation but also as a result of a degenerative process (arthrosis), an inflammation (arthritis) or a tumour;
- (v) to simplify the French text to make it easier to understand.
- (3) to align the two versions of the second paragraph of Part II by supplementing the English text on the basis of the French, as follows :

French : Unchanged

English : " ... others are designed to be fixed to a bed or support (protective bed cradles, extension fracture apparatus made of tubing, to be used in the place of splints or cradles, etc.)".

24. In the Annex, the Secretariat has reproduced the proposals to amend the legal text and different variants of the Explanatory Notes intended to ensure that the two versions are correctly aligned and must leave it to the Committee to decide which text to take into consideration.

#### IV. CONCLUSION

25. On the basis of the information provided above, the Committee is invited :

- (1) to express its views on the draft amendment to the legal texts of heading 90.21 and subheading 9021.10;
- (2) to rule on the proposals to align the Explanatory Note to heading 90.21, as formulated by the **EC** and the Secretariat.

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