



HARMONIZED SYSTEM  
COMMITTEE

-  
32<sup>nd</sup> Session  
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NC0768E1  
(+ Annex)

O. Eng.

Brussels, 23 October 2003.

POSSIBLE AMENDMENT OF THE SUBHEADING EXPLANATORY NOTES TO

HEADING 94.01

(Item VI.17 on Agenda)

Reference documents :

NC0423E1 (HSC/27)  
NC0510E2, Annex H/2 (HSC/28 – Report)  
NC0590E2, Annex H/15 (HSC/29 – Report)  
NC0685E1 (HSC/31)

NC0430E2, Annex K/2 (HSC/27 – Report)  
NC0551E1 (HSC/29)  
NC0665E2, Annexe G/19 (HSC/30 – Report)  
NC0730E2, Annex H/17 (HSC/31 – Report)

I. BACKGROUND

1. At its 31<sup>st</sup> Session, the Harmonized System Committee examined the issue of amending the subheading Explanatory Notes to heading 94.01. In order to clarify the classification of safety seats for infants and toddlers in subheading 9401.80, it adopted a new subheading Explanatory Note for that subheading. However, consensus was not reached with regard to a new subheading Explanatory Note for subheadings 9401.10 and 9401.20 to clarify the fact that these subheadings were limited to seats for permanent installation. The Committee finally deemed it appropriate to place the draft text in square brackets for re-examination at its next session. This approach was aimed at encouraging additional consultation and verification during the intersession, in order to enable administrations to present a more appropriate text.
2. On 26 September 2003, the Secretariat received the following note from the **Canadian** Administration containing an alternative text for the amendment to the subheading Explanatory Notes to heading 94.01. This note is reproduced below.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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## II. NOTE FROM THE **CANADIAN** ADMINISTRATION

3. "I am writing to inform you of the **Canadian** Administration's position on the proposed amendment to the Explanatory Notes to heading 94.01, as contained in Annex M/9 to Doc. NC0730B2 (HSC/31/May 2003).
4. You will recall that this proposal was examined at the 31<sup>st</sup> Session of the HSC and carried over to the next session for further discussion. The purpose for such an amendment is to restrict the provisions for seats of a kind used for aircraft in (9401.10) and for motor vehicles in 9401.20 to only those "designed for permanent installation". The original proposal was to restrict those provisions to "original manufacturers' equipment".
5. The **Canadian** Administration appreciates the effort by the Secretariat in drafting the proposed amendment. However, we have concerns with the proposed wording for the following reasons :

The expression "of a kind used" appears 86 times in the headings of the Nomenclature and 780 times in the Explanatory Notes. For example,

  - ④ heading 12.11 provides for plants and parts of plants (including seeds and fruits), **of a kind used** primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered; and
  - ④ subheading 0505.10 provides for, feathers **of a kind used** for stuffing; down.
6. The **Canadian** Administration's position is that whatever meaning is given to the expression "of a kind used" should apply throughout the Nomenclature. In other words, the same expression cannot be given different meanings in different parts of the Nomenclature. The **Canadian** Administration believes, therefore, that contrary to its implied purpose, the proposed amendment to the Explanatory Notes will not promote uniformity and consistency in the application and interpretation of the HS and should therefore not be pursued.
7. However, should the Committee decide to proceed with the amendment, the **Canadian** Administration offers the following alternative wording for consideration. We believe that it provides a more defensible interpretation of the term in question.

### **"Subheadings 9401.10 and 9401.20**

**These subheadings cover seats of the type installed in aircraft or motor vehicles."**

## III. SECRETARIAT COMMENTS

8. The Secretariat would draw the Committee's attention to the fact that the proposed text for a new subheading Explanatory Note for subheadings 9401.10 and 9401.20 does not contain a reference to the expression "of a kind used". Consequently, the Secretariat is somewhat at a loss regarding the **Canadian** Administration's comments and would

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request the **Canadian** Administration to clarify its position at the next session of the Committee in November.

#### IV. CONCLUSION

9. The Committee is invited to rule on the text of the proposed amendments to the Explanatory Notes to subheadings 9401.10 and 9401.20, which it had examined at its 31<sup>st</sup> Session and had placed in square brackets, as well as the **Canadian** Administration's alternative text, both of which are set out in the Annex to this document.

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