



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
25th Session
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NR0231E1
(+ Annex)

O. Eng.

Brussels, 21 January 2002.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE AND
THE EXPLANATORY NOTES CONCERNING HEADING 26.20
(PROPOSALS BY AUSTRALIA AND THE SECRETARIAT)

(Item III.B.2 on Agenda)

I. BACKGROUND

1. In the course of the separate identification of certain categories of waste during the previous review cycle, the text of heading 26.20 was amended to include a reference to ash and residues containing arsenic and arsenic compounds. The texts now read :

"Ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds. (English)

Cendres et résidus (autres que ceux provenant de la fabrication de la fonte, du fer ou de l'acier) contenant de l'arsenic, des métaux ou des composés de métaux. (French)"
2. It should be noted that, while the English text refers to "containing arsenic, metals or their compounds", the French text refers to "containing arsenic, metals or metal compounds". This misalignment has the risk of leading readers of the French text to the conclusion that the heading does not cover ash and residues containing "arsenic compounds". Even the English version is open to interpretation as to whether the term "their" refers to the plural term "metals" or both "metals" and "arsenic".
3. It is clear, however, from the text of subheading 2620.60, Subheading Note 2 to Chapter 26 and Note 1 (c) to Chapter 38, that ash and residues containing mixtures of arsenic fall in heading 26.20.
4. The Secretariat is therefore of the view that the French text should be aligned on the English text, but at the same time, the English text should be made clearer.

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

File No. 2904

5. On 21 December 2001, the Secretariat also received the following proposal from the Australian Administration for the insertion of the term “slag” in the text of heading 26.20 :
- 5.1. As part of the Harmonized System (HS) Third Review, the Australian Customs Service requests that consideration be given to amending heading 26.20 to include the term “slag”, so the heading would read :
- “Ash, slag and residues (other than from the manufacture of iron or steel), containing metals or metal compounds”.
- 5.2. The inclusion of the word “slag” would clarify that heading 26.20 covers slag containing metals or metal compounds other than from the manufacture of iron or steel, which Australia considers is currently incorporated in the word “residues”.
- 5.3. Australia is not aware of any reason for the non inclusion of the word “slag” within the heading, but notes that Item (1) on page 220 of the Harmonized System Explanatory Notes (1996), includes slag within that classification.
- 5.4. Australia considers that the wording of heading 26.20 is not clear as it is not consistent with the other headings of Chapter 26 that mention “slag”. It also considers that this anomaly could result in slag, which should be classified within heading 26.20, being incorrectly classified within heading 26.21.
- 5.5. Should the Review Sub-Committee agree with this suggestion, Australia considers it would also be appropriate to insert a reference to “slag” within sub-Notes (a) and (b) of Note 3 to Chapter 26.”

II. SECRETARIAT COMMENTS

Australian Proposal

6. Although the term “residues” should cover, *inter alia*, the term “slag”, the Secretariat agrees with the Australian Administration that the insertion of the term “slag” in the text of heading 26.20 would clarify that :
- (a) heading 26.20 covers “slag containing metals or metal compounds”, other than from the manufacture of iron or steel (slag of heading 26.18 or of heading 26.19); and that
- (b) “slag containing metals or metal compounds”, other than from the manufacture of iron or steel, should not be incorrectly classified in heading 26.21.
7. The Australian Administration is of the view that it would also be appropriate to insert a reference to “slag” in Notes 3 (a) and 3 (b) to Chapter 26. In this connection, Subheading Note 2 to Chapter 26, Note 1 (c) to Chapter 38, the corresponding Explanatory Notes, as well as the Explanatory Notes to headings 38.25, 74.04, 75.03, 76.02, 78.02, 79.02, 80.02 and 81.04 (exclusions) should also be amended.

Secretariat Proposal

8. One way of making the alignment proposed by the Secretariat could be to replace :
- English : the statement “containing arsenic, metals or their compounds.” with “containing arsenic, metals or compounds of arsenic or metals.”; and

- French : the statement “contenant de l'arsenic, des métaux ou des composés de métaux.” with “contenant de l'arsenic, des métaux ou des composés de l'arsenic ou de métaux. “

9. An alternative way, however, would be simpler and would give the Sub-Committee the opportunity to align both the English and the French versions of the text of heading 26.20 with the texts of Note 3 to Chapter 26, Subheading Note 2 to Chapter 26 and Note 1 (c) to Chapter 38 (English and French). This would be to replace :

- English : the statement “containing arsenic, metals or their compounds.” with “containing metals, arsenic or their compounds.”; and
- French : the statement “contenant de l'arsenic, des métaux ou des composés de métaux.” with “contenant des métaux, de l'arsenic ou leurs composés.”

Punctuation error

10. The English version of the text of heading 26.20 contains a comma after the bracketed phrase. The Secretariat believes that this comma does not contribute anything to the text. If the Sub-Committee agrees, it should be deleted.

Misalignment of exclusion (a) of the Explanatory Note to heading 75.03

11. The English version of exclusion (a) of the Explanatory Note to heading 75.03 reads “Ash and nickel residues”. The term “nickel” here refers only to “residues”, but the term “ash” stands alone (i.e., ash of “what” ?). As such, this exclusion is not aligned on its French counterpart, which appears to be the correct version and is consistent with other exclusions referring to “ash and residues” in certain other Explanatory Notes. The Sub-Committee may wish to correct the aforementioned English version to refer to ash and residues from the manufacture of nickel.

Texts

12. The draft amendments to the Nomenclature and consequential draft amendments to the Explanatory Notes are set out in the Annex hereto, the two alternatives given in paragraphs 8 and 9 and the proposal made in paragraph 10 above having been placed in square brackets.

III. CONCLUSION

13. Taking into account the comments by the Australian Administration and by the Secretariat, the Sub-Committee is invited to examine the draft texts set out in the Annex to this document.

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