



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0391E1

-
27th Session
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O. Fr.

Brussels, 17 February 2003.

COMPREHENSIVE REVIEW OF THE EXPLANATORY NOTES

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTES TO CHAPTER 87

(Item III.C.8 on the Agenda)

Reference documents :

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|---------------------------------------|---|
| 39.935 (RSC/13) | NR0308E1 (RSC/26) |
| 40.180 (RSC/13 – Report) | NR0332E3, Annex E/17 (RSC/26 – Report) |
| 40.260 (HSC/17 – Report) | NR0362E1 (RSC/27) |
| NR0150E1 (RSC/23) | NR0390E1 (RSC/27) |
| NR0165E2, Annex B/2 (RSC/23 - Report) | NC0655E2, Annex E, para. 79 (HSC/30 – Report) |

I. BACKGROUND

1. At its 26th Session, the Review Sub-Committee conducted a preliminary examination of the amendments which have been proposed to the Explanatory Notes to Chapter 87, and agreed to continue looking at this question at the next session, on the basis of a summary document setting out the views expressed during the meeting and the comments submitted by administrations (Doc. NR0332E3, Annex E/17 – RSC/26, Report).
2. In this connection, the Delegate of the **EC** referred to difficulties which are sometimes encountered with regard to the distinction to be made between the vehicles of heading 87.13 (carriages for disabled persons) and those of heading 87.03 (other than vehicles principally designed for the transport of person).

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II. SECRETARIAT COMMENTS

3. The summary document setting out the views expressed with regard to the proposed amendments to the Explanatory Notes to Chapter 87, together with new comments from the **Canadian** Administration, are reproduced in Docs. NR0362E1 and NR0390E1.
4. With regard to the difficulties referred to in paragraph 2 above, in accordance with the Sub-Committee's instructions the Secretariat has carried out a study aimed at determining the scope of the headings concerned.
5. The problem is finding a demarcation line between the vehicles of heading 87.13, which must be specially designed for the transport of disabled persons, and vehicles which are classified elsewhere in Chapter 87.
6. On the subject of the term "invalides" – this being the terminology currently employed in the French version, both in the text of heading 87.13 and in the corresponding Explanatory Note - the Secretariat wishes to remind the Sub-Committee that the possibility of changing the terminology used in the Harmonized System to refer to people with disabilities was examined during the previous review cycle, and that a change was in fact made only in the English text, where "invalids" was replaced by "disabled persons" in the framework of the 2002 amendments (see Annex E/1, para 23, to Doc. 40.260 - HSC/17/May 1996).
7. For the French version of the Nomenclature, the Sub-Committee decided to maintain the status quo where the use of the term "invalides" in the text of heading 87.13 and subheading 8714.20 was concerned (see Annex A/9 to Doc. 40.180 – RSC/13/March 1996).
8. At that time, the Secretariat had already raised questions about the advisability of amending the texts concerned, and about whether it was possible to differentiate between "vehicles for persons with a disability, motorised", and a motor car of heading 87.03 which has been specially adapted for being driven by persons having a specific disability (Doc. 39.935 of 25 January 1996, paragraph 17).
9. In the light of the foregoing, the Secretariat leaves it to the Sub-Committee to rule on the advisability of amending the texts in the manner proposed by the **Canadian** Administration, and replacing the term "invalides" in the French version of the Explanatory Note to heading 87.13 by "personnes handicapées", and with "disabled persons" being replaced by "persons with disabilities" in the English.
10. If the Sub-Committee does decide in favour of these amendments, they will also need to be made on page 1729 of the Explanatory Notes, in the General Notes to Chapter 87, item (5), as well as in the texts of heading 87.13 and subheading 8714.20.
11. Nevertheless, the Secretariat wishes to point out to the Sub-Committee that where articles intended for handicapped or disabled persons are concerned, the terms used assume particular significance given the preferential treatment which often exists for these articles at importation.
12. Whichever terminology is adopted, the Secretariat considers that it might be worthwhile to clarify the meaning of the term employed in the Explanatory Notes, so that the scope of heading 87.13 can be determined precisely.

13. Nevertheless, the Secretariat notes that heading 87.13 appears to be quite restrictive and that it appears to cover only carriages and similar vehicles which have been specially designed for the disabled.
14. This interpretation is confirmed not only by the actual text of heading 87.13, but also by the first paragraph of the Explanatory Note thereto (page 1744), which reads : This heading covers carriages, or similar vehicles, specially designed for the transport of disabled persons, whether or not fitted with means of mechanical propulsion.
15. It must also be borne in mind that this same Explanatory Note excludes from heading 87.13 vehicles which have simply been adapted for use by disabled persons, such as motor cars fitted with a hand-operated brake and accelerator (heading 87.03), or bicycles fitted with a special attachment enabling them to be pedalled with one foot (heading 87.12). The latter are in fact referred to in the Explanatory Note to heading 87.12 as "bicycles specially constructed for the disabled" (page 1744, first paragraph, item (4)).
16. It should be noted also that the first and second paragraphs of the Explanatory Note to heading 87.03 (page 1733) indicate that the vehicles of this heading may have any type of motor (internal combustion piston engine, electric motor, gas turbine, etc.). The heading also covers lightweight three-wheeled vehicles of simpler construction, such as those mounted on a T-shaped chassis, whose two rear wheels are independently driven by separate battery-powered electric motors. These vehicles are normally operated by means of a single central control stick with which the driver can start, accelerate, brake, stop and reverse the vehicle, as well as steer it to the right or to the left by applying a differential torque to the drive wheels or by turning the front wheel.
17. Heading 87.11 also covers related vehicles such as a motor-scooter or a three-wheeled vehicle of the delivery tricycle type. According to the first paragraph of the Explanatory Note to heading 87.11 (page 1743), heading 87.11 covers a group of two-wheeled motorised vehicles which are essentially designed for carrying persons. The second paragraph of this Note indicates that in addition to motorcycles of the conventional type, the heading includes motor-scooters, characterised by their small wheels and by a horizontal platform which joins the front and rear portions of the vehicle. The Explanatory Note does not specify how many wheels motor-scooters have. The fourth paragraph of this Explanatory Note states that three-wheeled vehicles (e.g., the " delivery tricycle " type) are also classified in this heading provided they do not have the character of motor vehicles of heading 87.03.
18. The Secretariat also wishes to point out that at its 26th Session, the Harmonized System Committee classified certain motorised vehicles in heading 87.03 (see Annex H/7 to Doc. NC0340E2, HSC/26 – Report, as well as Classification Opinion 8703.10/1). The vehicles concerned were motor vehicles which could also be used by disabled persons, but the Committee decided to classify them in heading 87.03 on the grounds that they should be regarded as normal three or four wheeled vehicles designed for the transport of persons, and that they were not designed primarily for the disabled.
19. In the light of the foregoing, it could be maintained that in order to be classified in heading 87.13 a vehicle must – as is stipulated by the corresponding Explanatory Note – be specially designed for the transport of disabled persons and that by definition, because of its design and its technical characteristics it cannot, or will not normally, be driven by anyone other than a disabled person, it being noted that ordinary vehicles which have simply been adapted for use by disabled persons are at all events excluded from heading 87.13.

20. The Secretariat leaves it to the Sub-Committee to decide whether it would be appropriate to amend the Explanatory Note to heading 87.13 in order to clarify the scope of the heading along the lines indicated above.

III. CONCLUSION

21. In the light of the above comments by the Secretariat, the Sub-Committee is invited to indicate whether the Explanatory Notes should be amended and, if so, to give its views on the proposals to amend Explanatory Note 87.13 which are set out in paragraphs 19 above.
