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HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
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NR0177E1
(+ Annexes I and II)
O. Eng.

Brussels, 10 July 2001.

PROPOSAL BY THE US TO AMEND THE NOMENCLATURE TO CHAPTER 41

(Item III.A.9 on Agenda)

Reference documents :

NR0155E1 (RSC/23)
NR0165E2, Annex D/4 (RSC/23 – Report)

I. INTRODUCTION

1. At its 23rd Session, the Review Sub-Committee had a preliminary discussion on the US proposal to amend certain parts of Chapter 41, following the HS 2002 amendments.
2. One delegate requested the Secretariat to look into the question whether or not the proposed amendments would entail a transfer of products. Administrations were invited to submit their comments in good time, to enable the Secretariat to prepare a new working document.

II. SECRETARIAT COMMENTS

3. The Secretariat would like to point out first that, at the time of the preparation of this document, it had not received comments from administrations.
4. Second, to facilitate discussions in the Sub-Committee and to be able to compare the texts concerned, the Secretariat has reproduced the HS 2002 texts and the US proposals in table format in Annex I to this document. The possible amendments to the Nomenclature are reproduced in Annex II to this document.

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5. With respect to the actual proposal, the Secretariat offers the following comments.

(i) Note 2 (A)

6. Note 2 (A) to Chapter 41 was introduced in the context of the re-structuring of Chapter 41 (HS 2002 edition), to clarify that certain hides and skins (i.e., those which had been provisionally tanned) were to be excluded from headings 41.04 to 41.06. Such hides and skins were to be directed to headings 41.01 to 41.03 (paragraph 2 of Annex A/20 to Doc. NR0045E2 (RSC/19 – Report)). In this context, the Secretariat had noted the following in paragraphs 20 to 22 of Doc. NR0020E1 (RSC/19) :

“20. The EC proposal encompasses, among others, the splitting of present headings 41.04 to 41.07 into 7 new headings, to give separate status to (i) intermediate products (i.e., “tanned or crust hides and skins” - headings 41.04 to 41.06) and (ii) finished products (i.e., “finished leather” - headings 41.07, 41.10 and 41.11 (as re-numbered by the Secretariat)). The Secretariat indicated (in paragraph 10 of Doc. 42.473), however, that the proposed structure would be incomplete as it did not provide for the classification of provisionally prepared hides and skins currently classified in headings 41.04 to 41.07. These provisionally prepared hides and skins have not yet undergone an irreversible tanning process (but may have been treated with tanning agents so that they become less susceptible to putrefaction and better prepared for subsequent tanning) and, therefore, fall outside the scope of the term “tanned” used in proposed headings 41.04 to 41.06. The process is also described in the International Glossary of Leather Terms, issued by the International Council of Tanners, as “the processing of perishable raw hides and skins by the use of tanning materials into the permanent and imputrescible form of leather”.

21. The EC (COTANCE) considers, in its observations, that such provisionally prepared hides and skins do not fall within present headings 41.04 to 41.07, but belong to headings 41.01 to 41.03, as the case may be. The Secretariat would like to point out that present headings 41.04 to 41.07 cover (dehaired) hides and skins pre-tanned or tanned (emphasis added) – see the Explanatory Note to heading 41.04, first paragraph, on page 653. Pre-tanned hides and skins include, e.g., hides and skins pre-tanned with alum salts, which can be washed out, causing a reverse in the tanning action. The Secretariat understands, however, that the EC proposal intends to exclude this type of prepared hides and skins from proposed new headings 41.04 to 41.06, and to include them in headings 41.01 to 41.03, as the case may be. Consequently, the category “provisionally prepared leather”, as contained in the Rules of Origin (see Annex III to Doc. 42.473) would then no longer fall within present headings 41.04 to 41.07, but in headings 41.01 to 41.03 in future. Nonetheless, the EC is invited to clarify its position, i.e., whether certain types of pre-tanning (e.g., those processes which do not cause an irreversible tanning) should be excluded from new headings 41.04 to 41.06.

22. In this context, the Secretariat understands that the term “tanned” (as used in the proposed headings 41.04 to 41.06) also includes processes such as pre-tanning and re-tanning. However, if the Sub-Committee agrees with the principle that certain types of pre-tanning should be excluded from headings 41.04 to 41.06 (see paragraph 21 above), the Secretariat suggests introducing a Note to Chapter 41 to that end. This new Note (which could be introduced as new Note 2 to Chapter 41) could read as follows :

“2.- Headings 41.04 to 41.06 do not cover hides and skins which have undergone a tanning (including pre-tanning) process which is reversible (headings 41.01 to 41.03, as the case may be).”

7. The US Administration stated that “the original intent of Note 2 (A) to Chapter 41 was to keep pre-tanned hides and skins in the first three headings” (second paragraph of the Annex to Doc. NR0155E1). This wording gives the impression that pre-tanned hides were always classified in headings 41.01 to 41.03 under the HS 1996 and HS 2002 editions. However, given the wording of headings 41.04 to 41.07 (HS 1996) (which include subheadings for pre-tanned products), the Explanatory Notes to these headings and the interpretation reflected in the above-referenced paragraphs, which was accepted by the Sub-Committee, this statement must be a misunderstanding of the actual situation. Moreover, similar proposals for the HS 2002 Explanatory Notes to Chapter 41 were not accepted by the Committee.
8. Since it was the intention to differentiate between hides and skins which had undergone a reversible process on the one hand, and those hides and skins which had undergone an irreversible process, on the other hand, the said Note does not describe the difference between pre-tanning and tanning. From the US observations, the Secretariat understands that the Note should, however, make this distinction, thereby redefining the scope of headings 41.01 to 41.03 as covering untanned hides and skins, on the one hand and that of headings 41.04 to 41.06 as covering tanned (but not further prepared) hides and skins, on the other hand (emphasis added). The US note indicates that the best way to do so, would be by reference to permanence of the protection from decay which have the hides and skins undergone.
9. That being the case, the Secretariat wonders whether the suggested wording would be appropriate to achieve that goal.
10. First, the proposed wording may contradict the wording of headings 41.01 to 41.03, which read : “Hides and skins (. . .) or otherwise preserved, but not tanned (. . .)” (emphasis added). The term “tanned” as used in these texts, does not necessarily exclude “pre-tanned”, since the latter may be considered as a sub-set of the former. To resolve this potential problem, the first sentence of the US proposal could read as follows : “For the purposes of headings 41.01 to 41.03, the term “tanned ” does not include a pre-tanning process which temporarily prevents putrefaction.”.
11. Second, the first sentence of the text proposed by the US Administration comprises a defining relative clause (i.e., “. . . a pre-tanning process that temporarily prevents putrefaction”) (emphasis added), which qualifies the scope of the expression “pre-tanning process” and implies that there are also pre-tanning processes which do prevent putrefaction. That being the case, it seems to contradict the intention of the US proposal to separate “pre-tanned” hides and skins from “tanned” hides and skins. The US Administration may wish to clarify the above points.
12. Third, the exact scope of the terms “temporarily” and “permanently” may not be entirely clear. Therefore, the Secretariat has some doubts whether it would indeed be easier (as suggested by the US Administration) to make this distinction, rather than making the analysis whether some process is reversible.

13. Fourth, the intention of the second sentence of the proposed new text for Note 2 (A) is not entirely clear to the Secretariat, either. It could be read as a clarification that hides and skins which have undergone a certain treatment are to be classified in headings 41.04 to 41.06 or in later headings of Chapter 41, which is, in the view of the Secretariat, obvious, given the wording of headings 41.01 to 41.03 (which exclude hides and skins which have been tanned, parchment- dressed or further prepared than preserving). The US may wish to clarify this point.
14. Fifth, the wording and scope of Note 2 (A) (HS 2002) is in line with the definitions for “provisionally prepared leather” and “tanned leather”, as adopted by the Technical Committee of Rules of Origin. A deviation from these definitions would, in the view of the Secretariat, entail difficulties in the application of the Rules of Origin.
15. Having said this, the Secretariat leaves it to the Sub-Committee to decide whether Note 2 (A) should be amended, as suggested by the US Administration. Pending the outcome of the discussions, the Secretariat has placed the proposal, which is reproduced in Annex II to the document, in square brackets.

(ii) Use of the term “leather”

16. The US proposal to replace the terms “hides” and “skins” by the term “leather” seems to be a question whether the headings concerned (i.e., 41.04 to 41.06) should refer to the processes applied (i.e., tanning and crusting) or to the product obtained by these processes (leather). The Secretariat, while leaving it to the Sub-Committee to decide, would like to offer the following comments.
17. First, if the US proposal were adopted, a non-alignment in the presentation between the English and the French versions may occur, since the French term “cuir” (or “cuirs”) may refer equally to “hides” as well as to “leather”. The texts of the French version (i.e., “cuirs et peaux”), as translated by the Secretariat in Doc. NR0155F1, do not refer to “leather” but to “hides” and “skins”. However, the French text of heading 41.04 could read as follows : “Cuirs non préparés après le tannage ou le dessèchement (cuirs et peaux en croûte), de bovins (y compris les buffles) ou d'équidés, épilés, même refendus.”. The text of headings 41.05 and 41.06 could be reworded in the same way.
18. If the Sub-Committee opts for the alternative text proposed in paragraph 17 above, the Secretariat suggests aligning the proposed English version, as follows : “Leather of bovine (including buffalo) or equine animals, not further prepared after tanning or crusting, without hair on, whether or not split.” for heading 41.04. The texts for headings 41.05 and 41.06 could be redrafted in the same way. The original proposal and the alternative texts are reproduced in Annex II to the document.
19. Second, with respect to the actual text proposed, the Secretariat assumes that the word “further” should also be used for heading 41.04 (English version only). The proposed amendments, as set out in Annex II to the document, have been duly amended.

20. Finally, the Secretariat has some difficulty in following the US observations that the term “hides and skins” as used in headings 41.04 to 41.06 has caused problems to Customs officers. The HS 1996 edition of the Harmonized System refers to “leather” in the corresponding HS 1996 headings, whereas the term “tanned hides and skins” is to be introduced as per 1 January 2002. Furthermore, before classifying a product at the subheading level, the terms of the heading concerned should be respected, which read “Tanned (...) hides and skins” (HS 2002) (emphasis added). The Secretariat, therefore, sees no problem in the application of the wording as is in the HS 2002 edition.

(iii) Note 2 (B) to Chapter 41

21. The Secretariat has reproduced the proposed amendment to Note 2 (B) to Chapter 41 in square brackets, pending the outcome of the discussions vis-à-vis the possible new wording of headings 41.04 to 41.06.

(iv) Transfer of products

22. Although the proposal concerns, in principle, a clarification of texts, the Secretariat considers that the proposed amendments may entail a transfer of products, at least in theory, if the US proposal for Note 2 (A) were accepted. It concerns in fact the transfer from headings 41.04 to 41.06 to heading 41.01 to 41.03, of those hides and skins which have undergone an irreversible tanning process, but have not been treated so as to be permanently imputrescible.

(v) Explanatory Notes

23. Given the fact that the Explanatory Notes (HS 2002) have not been published, the Secretariat considers that possible amendments in this respect could be dealt with, once the Sub-Committee has taken a decision to amend the legal texts. In this context, the Secretariat would like to remind administrations to present the appropriate draft amendments to the Explanatory Notes along with any proposed amendment to the legal text.

III. CONCLUSION

24. The Sub-Committee is invited to examine the comments from the U.S. Administration, taking into account the comments by the Secretariat as mentioned in paragraphs 3 to 23 above.

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