



HARMONIZED SYSTEM
COMMITTEE

-
26th Session

NC0285E1
(+ Annex)
O. Eng.

Brussels, 20 September 2000.

AMENDMENT OF THE EXPLANATORY NOTES
ARISING FROM THE CLASSIFICATION OF "BIO-ADD"
(RESERVATION BY SWITZERLAND)
(Item VII.3 on the Agenda)

Reference Documents :

42.038 (HSC/21)
42.464 (HSC/22)
42.488 (HSC/22)

42.750, Annex H/4 (HSC/22 - Report)
NC0024E1 (HSC/23)
NC0090E2, Annex G/7 (HSC/23 – Report)

I. BACKGROUND

1. At its 23rd Session (May 1999), the Harmonized System Committee examined the proposed amendments to the Explanatory Notes arising from the classification of products called "Bio-Add" and decided to insert a new exclusion to the Explanatory Note to heading 23.09 and an amendment to the Explanatory Note to heading 38.08. The texts adopted are reproduced in the Annex hereto.
2. By its letter of 22 July 1999, the Swiss Administration asked the Secretary General of the WCO to refer the Committee's decision on the above-mentioned amendments to the Explanatory Notes to the Council, in accordance with the provision of Article 8.2 of the HS Convention.
3. The Council, at its 95th/96th Sessions in July 2000, considered the Swiss reservation and it decided to refer the question back to the Committee for re-examination.
4. On 2 August 2000, the Secretariat received the following Note from the Swiss Administration putting forward reasons in support of the reservation it had entered in respect of the decision of the Harmonized System Committee (23rd Session) concerning the amendments to the Explanatory Notes.

File No. 2724

II. NOTE FROM THE SWISS ADMINISTRATION

5. Further to our letter of 22 July 1999, below are the reasons which led the Customs Administration of Switzerland to enter a reservation to the amendment of the Explanatory Notes arising from the classification of liquids called "BIO-ADD" (Annex M/19 to Doc. NC0090B2).
6. At its 23rd Session, the HSC approved amendments to be made to the Explanatory Notes regarding preparations in the nature of anti-microbial disinfectants used in the manufacture of animal feeds (heading 23.09, page 188, last paragraph, new exclusion (ij) and heading 38.08, page 567, Part (IV), second paragraph). The Swiss Administration cannot agree to these amendments because, in its opinion, the exclusion does not take account of the fact that products with disinfectant effects can also contain ingredients which give them, particularly on account of their energy content, the character of preparations of a kind used in animal feeding (heading 23.09). For example, there are products which, besides acids, contain substantial quantities of *propionic acid*. This substance is a notable "energy" nutrient. Classification of all products with disinfectant properties in heading 38.08 would be clearly contrary to the provisions of the Customs tariff, particularly as regards the scope of heading 23.09. It is well known that the HS Explanatory Notes to that heading specifically mention comparable products (stabilisers, anti-oxidants, etc.).
7. For the above reasons, Switzerland requests that the new exclusion (ij) for the Explanatory Note to heading 23.09 or else that the text of the amendment to the Explanatory Note to heading 38.08 be supplemented as follows (see text in italics) :

Page 188. Heading 23.09. Insert the following new exclusion (ij) :

"(ij) Preparations in the nature of antimicrobial disinfectants used in the manufacture of animal feeds to control undesirable micro-organisms (**heading 38.08**). *However, products having a disinfectant effect, but containing additives which give them the character of preparations of a kind used in animal feeding remain in this heading.*"

Page 567. Heading 38.08. Item (IV). Second paragraph. Second sentence.

Delete and substitute :

"They are also used in agriculture for disinfecting seeds and in the manufacture of animal feeds to control undesirable micro-organisms. *However, products having a disinfectant effect but containing additives which give them the character of preparations of a kind used for animal feeding are excluded from this heading (**heading 23.09**).*"

III. SECRETARIAT COMMENTS

8. The Swiss Administration is of the opinion that the new exclusion to the Explanatory Note to heading 23.09 adopted by the Committee, at its 23rd Session, does not take account of the fact that products with disinfectant effects can also contain ingredients which give them, on account of their energy content, the character of preparations of a kind used in animal feeding and it refers to propionic acid in this regard (see paragraph 6 above).

9. The Secretariat would like to point out that when the question at issue was examined at the 22nd Session of the HS Committee, there seemed to be a common understanding that the role of propionic acid as an "energy" nutrient was insignificant (see paragraphs 4 and 5 of Doc. 42.464 and Annex H/4 to Doc. 42.750 (HSC/22 Report). Furthermore, according to the technical information available to the Secretariat, propionic acid is an effective food preservative and the Secretariat has not been able to obtain any technical information which supports the opinion of the Swiss Administration.
10. In addition to the above, the Secretariat does not have any information with regard to products with disinfectant effects which are also "energy" nutrients.

IV. CONCLUSION

11. The Committee is invited to re-examine the amendments to the Explanatory Notes to headings 23.09 and 38.08, reproduced in the Annex hereto, taking into account the comments of the Swiss Administration in paragraphs 5 to 7 above and the comments of the Secretariat in paragraphs 8 to 10.

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Annexe au Doc. NC0285B1
Annex to

(CSH/26/nov. 2000)
(HSC/26/Nov. 2000)

ANNEXE

MODIFICATION DES NOTES EXPLICATIVES DECOULANT DU CLASSEMENT
DES LIQUIDES "BIO-ADD" DANS LE N° 3808.40

(Point VII.3 de l'ordre du jour)

ANNEX

AMENDMENTS TO THE EXPLANATORY NOTES ARISING FROM THE
CLASSIFICATION OF "BIO-ADD" LIQUIDS IN SUBHEADING 3808.40

(Item VII.3 on Agenda)

MODIFICATION DES NOTES EXPLICATIVES
A EFFECTUER PAR VOIE DE CORRIGENDUM

CHAPITRE 23.

Page 188. N° 23.09. Dernier paragraphe. Nouvelle exclusion ij).

Insérer la nouvelle exclusion ij) ci-après :

"ij) Les préparations ayant la nature de désinfectants antimicrobiens, utilisées dans la fabrication d'aliments pour animaux afin de lutter contre les micro-organismes indésirables (n° **38.08**)."

L'exclusion actuelle ij) devient k).

CHAPITRE 38.

Page 567. N° 38.08. Rubrique IV). Deuxième paragraphe. Seconde phrase.

Nouvelle rédaction :

"Ils sont également utilisés en agriculture pour la désinfection des semences et dans la fabrication d'aliments pour animaux afin de lutter contre les micro-organismes indésirables."

AMENDMENTS TO THE EXPLANATORY NOTES
TO BE MADE BY CORRIGENDUM

CHAPTER 23.

Page 188. Heading 23.09. Last paragraph. New exclusion (ij).

Insert the following new exclusion (ij) :

"(ij) Preparations in the nature of antimicrobial disinfectants used in the manufacture of animal feeds to control undesirable micro-organisms (**heading 38.08**)."

Reletter the present exclusion (ij) as exclusion (k).

CHAPTER 38.

Page 567. Heading 38.08. Item (IV). Second paragraph. Second sentence.

Delete and substitute :

"They are also used in agriculture for disinfecting seeds and in the manufacture of animal feeds to control undesirable micro-organisms."
