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CLASSIFICATION OF A NON-ELECTRIC BARBECUE AND PROPOSED AMENDMENT OF
THE EXPLANATORY NOTES TO HEADING 73.21

(Item 1 on the Additional List)

I. BACKGROUND

1. On 2 October 2000, the Secretariat received the following proposal from the European Community regarding the amendment of the Explanatory Notes and the legal texts to heading 73.21.

II. NOTE BY THE EUROPEAN COMMUNITY (EC)

2. **“Subject** : Amendments to the legal texts of HS heading 73.21 and the corresponding Explanatory Notes

The EC has recently issued a BTI (Binding Tariff Information) according to which a non-electric domestic barbecue, of stainless steel, is to be classified in subheading 7321.11. The barbecue in question operates by means of two steel mirrors and uses only solar energy for cooking.

3. With regard to the present classification of a non-electric domestic barbecue using only solar energy for cooking, the EC considers that the text of heading 73.21 would allow it to be classified in that heading under GIR 1. This should rule out consideration of heading 73.26.
4. However, the Explanatory Note to heading 73.21 states that this heading "covers a group of appliances which meet all of the following requirements :
 - (i) be designed for the production and utilisation of heat for space heating, cooking or boiling purposes;
 - (ii) use solid, liquid or gaseous fuel, **but not** electricity;

File No. 2831

(iii) be normally used in the household or for camping."

5. The barbecue forming the subject of the above-mentioned BTI fulfils all these conditions **except** for that requiring the use of solid, liquid or gaseous **fuel**. Nevertheless, heading 73.21 cannot be ruled out for classification purposes since non-electric domestic barbecues, of steel, are specifically mentioned in the text of the heading. The EC therefore considers that, by laying down a condition that does not feature in the text of heading 73.21, the Explanatory Note appears to restrict the scope of that heading. It therefore believes that subparagraph (ii) of the Explanatory Note should be amended and proposes the following new wording :

English version

“ (ii) use solid, liquid or gaseous fuel, or other source of energy (e.g., solar energy), but not electricity; ”

French version

“2°) fonctionner au moyen de combustibles solides, liquides ou gazeux, ou au moyen d’autres sources d’énergie (énergie solaire, par exemple) **à l’exclusion** de l’électricité;”

These amendments to the Explanatory Notes could be made by corrigendum at the next session of the **Harmonized System Committee** (HSC/26), to be held in November 2000.

6. As regards classification at subheading level, it should first of all be pointed out that a barbecue is a cooking appliance. As a cooking appliance (subheading 7321.10) it could be classified in one of three six-digit subheadings, namely :

7321.11 -- For gas fuel or for both gas and other fuels

7321.12 -- For liquid fuel

7321.13 -- For solid fuel.

7. Clearly, the barbecue in question does not fit any of these descriptions. It should therefore be noted that the classification of this article cannot be determined without having recourse to GIR 4. In accordance with the legal provisions of that rule, the EC would classify this barbecue in subheading 7321.11, which reads: "for gas fuel or for both gas and other fuels", inasmuch as this subheading appears to be appropriate to the goods to which it is most akin.

8. Nevertheless, the EC is aware that the question of the similarity between this non-electric, solar-energy-powered barbecue and the appliances mentioned in subheading 7321.11 could still pose a problem of interpretation that might result in administrations making different classifications. The EC therefore considers that the barbecue could also be classified in subheading 7321.13 under GIRs 6 and 3 (c) (subheading which occurs last in numerical order). Obviously, if the Committee accepts classification under GIR 3 (c), there will be no need to resort to GIR 4.

9. Given this classification difficulty at subheading level, the EC invites the Committee to consider, at the same time as the amendment of the Explanatory Note at "four-digit" level, the drafting of a Subheading Explanatory Note (7321.11 or 7321.13) that would ensure the uniform classification of these appliances in the current Nomenclature.

CONCLUSION

10. The EC considers that the non-electric domestic barbecue, of stainless steel, using only solar energy for cooking falls in heading 73.21 by application of GIR 1, despite the fact that it does not use solid, liquid or gaseous fuel and despite the restrictive wording of the current Explanatory Note. Similarly, classification in subheading 7321.11 under GIRs 6 and 4 or in subheading 7321.13 under GIRs 6 and 3 (c) could be envisaged.
11. The EC invites the HS Committee :
- To confirm the classification in present heading 73.21 (and, as appropriate, in subheading 7321.11 or 7321.13) of a non-electric domestic barbecue, of stainless steel, operating by means of two steel mirrors and using only solar energy for cooking;
 - To rule on the merits of the proposal to amend the present Explanatory Note to heading 73.21 so as to make it clear that the appliances of this heading can also use solar energy (Procedure under Article 8 of the HS Convention)."

III. SECRETARIAT COMMENTS

12. **Description :**

Non-electric domestic barbecue, of stainless steel, operating by means of two steel mirrors and using only solar energy for cooking.

Classification at four-digit level :

13. The text of heading 73.21 is worded as follows: "Stoves, ... barbecues ... and... non-electric domestic appliances ...". On the basis of the above description, the Secretariat feels that the appliance at issue fulfils the conditions set out in the legal text of this heading and would be inclined to support its classification in heading 73.21.

Classification at six-digit level :

14. With regard to the appropriate subheading classification, the current structure of heading 73.21 has to be taken into account. As the barbecue at issue is, by its structure and design, a cooking appliance, it is potentially covered by the one-dash subheading 7321.1 ("Cooking appliances and plate warmers") and therefore the three two-dash subheadings thereunder should be considered for classification purposes.
15. On the basis of the texts of subheadings 7321.11, 7321.12 and 7321.13, the Secretariat feels that in this particular case, classification by application of GIRs 1 and 6 is not possible. In fact, these subheadings refer to non-electric cooking appliances using fuel (gas, liquid, solid and other). Insofar as the texts of the three subheadings of 7321.1 refer to fuels, and given that solar energy is not a fuel, any possible classification in these subheadings by application of GIR 3 would also be inappropriate.

16. As the barbecue at issue is a solar-powered appliance, it can only be classified in one of the above-mentioned subheadings by application of GIR 4. The Secretariat feels that subheading 7321.11 is the most appropriate on the basis of that Rule.
17. The Secretariat agrees with the EC that the present Explanatory would seem to restrict the scope of heading 73.21. If the Committee decides to classify the “non-electric domestic barbecue, of stainless steel, operating by means of two steel mirrors and using only solar energy for cooking” in subheading 7321.11, the Secretariat could accept the EC’s proposal to amend, by corrigendum, the first paragraph of the Explanatory Note to heading 73.21 (page 1121).
18. As for the possible creation of a Subheading Explanatory Note to clarify the classification of such articles, the Secretariat leaves it to the Committee to take a decision in this respect.
19. With regard to the EC proposal to amend the structure of heading 73.21, the Secretariat feels that this matter could be submitted to the Review Sub-Committee for examination at its next session.

IV. CONCLUSION

20. The Committee is invited to rule on the classification of the non-electric barbecue described in paragraph 12 above, taking account of the arguments put forward by the European Community (paragraphs 2 to 11) and the Secretariat’s comments (paragraphs 13 to 19), and to decide on the action to be taken in respect of this matter.
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