



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM
COMMITTEE
-
27th Session
-

NC0363E1
(+ Annexes I and II)
O. Eng.

Brussels, April 2001.

DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL
ON THE INSERTION IN NATIONAL STATISTICAL NOMENCLATURES
OF SUBHEADINGS TO FACILITATE THE MONITORING AND CONTROL
OF PRODUCTS SPECIFIED IN THE DRAFT PROTOCOL CONCERNING FIREARMS
COVERED BY THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

(Item IV.2 on Agenda)

Reference documents :

NC0138E2 (HSC/24)	NC0250E2, Annex D/2 (HSC/25 – Report)
NC0149E1 (HSC/24)	NC0270E1 (HSC/26)
NC0160E2, Annex D/2 (HSC/24 – Report)	NC0339E1 (HSC/26)
NC0180E1 (HSC/24)	NC0340E2, Annexes D and N (HSC/26 – Report)

I. BACKGROUND

1. At its 26th Session, the Committee continued its consideration of a possible draft Recommendation on the insertion in national statistical nomenclatures of subheadings to facilitate the monitoring and control of products specified in the draft Protocol concerning firearms covered by the UN Convention against transnational organized crime, as suggested by the Canadian Administration.
2. Since there were some concerns with respect to a possible non-alignment between the French and English texts proposed for subheading 9305.91, following a proposal from the Canadian Delegate that the French text should read : “De mitrailleuses, de mitraillettes, ou de fusils et carabines comportant au moins un canon lisse”, the Committee decided to place the draft in square brackets, pending further discussions at the next session.
3. One delegate also questioned whether it would be possible to recognize the various commodities listed in the draft Recommendation. He suggested that the Committee first classify the various items before taking a final decision on the draft Recommendation.

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4. The Chairman invited administrations to submit their comments to the Secretariat as soon as possible, to allow the Secretariat time to prepare a document to be discussed at the next session.

II. SECRETARIAT COMMENTS

5. During the intersession, the Secretariat received notes from the Canadian, Irish and Russian Administrations, the Irish Administration indicating that the European Commission would respond on behalf of the EU Member States, while the Russian Administration indicated that it had no comments with respect to the draft Recommendation. The note from the Canadian Administration, the paragraphs of which have been numbered by the Secretariat to facilitate discussion in the Committee, is reproduced in Annex I to this document.

Canadian proposal

6. With respect to the proposals received from the Canadian Administration, the Secretariat would like to offer the following observations.
7. First, the Canadian Administration points out that the clause “either separately or grouped together where necessary to meet national requirements”, which appears in the Preamble, can be deleted, since the proposed entries no longer exceed 10 items per subheading. The Secretariat agrees with the Canadian Administration and suggests deleting this clause in the Preamble and in the “Requests” paragraph. However, pending the outcome of the discussions, the Secretariat has placed these references in square brackets.
8. Second, the Canadian Administration suggests rewording the text of the entry for subheading 9305.91 with a view to a better alignment of both texts. The proposed text reads as follows :

“Of machine guns, sub-machine guns, shotguns and rifles”

(French : “De mitrailleuses, de mitraillettes, de fusils et carabines comportant au moins un canon lisse, ou d’autres fusils et carabines”).

9. The Secretariat agrees that the proposed new wording results in a better alignment, although the word “and” in the English version should, in the Secretariat’s view read “or”. In this context, it should be noted that the references are in line with the translations suggested by the Canadian Administration in paragraph 5 of Doc. NC0270E1 (i.e., “shotgun” = “fusils et carabines comportant au moins un canon lisse” and “rifles” = “fusils et carabines”). Nonetheless, the Secretariat considers that, in the French version, the reference to “fusils et carabines comportant au moins un canon lisse” could be deleted, since it constitutes a subset of “fusils et carabines”. This is, to a certain extent also the case in the Canadian proposal, which refers to “autres fusils et carabines”. That being the case, the French text at issue could read as follows : “De mitrailleuses, de mitraillettes, de fusils ou de carabines”. The duly amended texts and the alternative text in the French version have been inserted in the draft Recommendation.

10. Third, to address the anomaly with respect to the concept of “antique” in the Harmonized System (i.e., commodities of an age exceeding 100 years) and that in the definition of firearms in the Firearms Protocol, the Canadian Administration suggests creating statistical subdivisions in headings 97.05 and 97.06, as follows :

- “ - Articles of subheadings 9301.90, 9302.00, 9303.10, 9303.20, 9303.30, 9305.10, 9305.29 and 9305.91 :
 - Manufactured on or before December 31, 1899
 - Manufactured after December 31, 1899
- Other”

(French : “

- Articles des sous-positions 9301.90, 9302.00, 9303.10, 9303.20, 9303.30, 9305.10, 9305.29 et 9305.91 :
 - Fabriqués le 31 décembre 1899 ou avant cette date
 - Fabriqués après le 31 décembre 1899
- Autres”).

11. The Secretariat would like to point out that the proposed date (i.e., 31 December 1899) separates firearms which are, in no case, to be considered “antique” in the context of the draft Firearms Protocol (i.e., firearms manufactured after 1899) from those which could be considered antique (depending on domestic law). In the context of the Harmonized System, however, any article of an age exceeding 100 years, is to be classified as “antique” in heading 97.06, unless it is an article of one of the other headings of Chapter 97 (see Note 4 to that Chapter). In the case at issue, firearms of any age may be collectors’ pieces of historical interest, of heading 97.05. To have the firearms classified in heading 97.05 or 97.06 also identified for the purposes of the Firearms Protocol, the Secretariat agrees with the Canadian suggestion to insert specific entries in these headings.

12. With respect to the proposed wording, the Secretariat notes that there might be a contradiction in terms, since headings 97.05 and 97.06 do not cover, by definition, “Articles of subheadings 9301.90, 9302.00, 9303.10, 9303.20, 9303.30, 9305.10, 9305.29 and 9305.91”. To overcome that possible anomaly and to clarify the scope of the proposed entry, the Secretariat suggests the following wording, which is based on the entries in headings 93.01, 93.02 and 93.03 :

“Machine-guns, sub-machine-guns, shotguns, rifles, revolvers and pistols; parts of the foregoing”

(French : “Mitrailleuses, mitraillettes, fusils, carabines, revolvers et pistolets; leurs parties”).

13. The Secretariat has inserted the above wording, as an alternative proposal in the draft Recommendation.

14. With respect to the proposed entry “Other” in headings 97.05 and 97.06, the Secretariat would simply like to recall its observations in paragraphs 9 to 13 of Doc. NC0270E1 (HSC/26), reflecting the Secretariat’s doubts concerning the

appropriateness of the use of entries designated "Other". It has, therefore, placed these entries in square brackets.

15. The draft Recommendation, amended as proposed by the Canadian Administration, together with the alternative texts suggested by the Secretariat, is set out in Annex II to this document.

Classification aspects

16. With respect to the question posed by the EC Delegate vis-à-vis the possibility of recognizing the various commodities (see Doc. NC0340E2, Annex D, paragraph 4 - HSC/26 Report), the Secretariat would like to indicate that it has not received any comments or observations in this respect. Therefore, the Secretariat has no reason to believe that the commodities listed in the various entries, could not be identified. However, comments of administrations in this respect are still welcome.

HS 2002 format

17. Following the Committee's approval to take into account the amendments to the Harmonized System which would come into force on 1 January 2002, the Secretariat has reproduced the draft Recommendation using HS 2002 references.

Timing

18. With respect to the question of when to present the draft Recommendation to the Council, the Secretariat would like to note the following.
19. First, the draft Firearms Protocol (including the scope of the term "firearms") has not yet been formally approved by the United Nations. It is expected that this will not happen before the Council Sessions in June this year.
20. Second, parallel to the initiative of the Canadian Administration vis-à-vis the draft Recommendation at issue, the Enforcement Committee and the Permanent Technical Committee (PTC) are also developing a draft Recommendation. During the last session of the PTC (April 2001), members considered it more appropriate to have further discussions with a view to finalizing the proposed draft Recommendation, once the Protocol had been formally adopted by the United Nations. Consequently, no draft Recommendation with respect to the Firearms Protocol would be presented to the Council this year.
21. That being the case, the Secretariat would prefer a similar approach with respect to the HS Recommendation, i.e., not presenting a draft Recommendation to the Council this year.

III. CONCLUSION

22. The Committee is invited to take account of the Secretariat's observations in paragraphs 5 to 21 above, when examining this Agenda item.

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Note from the Canadian Administration

In general the Canadian Administration concurs with the draft Recommendation. However, we would like to make the following proposals :

Preamble

1. In the fourth paragraph of the Preamble, the phrase “either separately or grouped together where necessary to meet national requirements” appearing in square brackets should be deleted. The problem in exceeding 10 items per subheading was addressed in the revised structure submitted by our administration and should no longer pose a problem. Retaining this text may defeat the purpose of an international statistical nomenclature, as it would allow administrations to “group together” the proposed entries and thus lead to inconsistencies among administrations. This approach would be consistent with the Secretariat's suggestion that was contained in paragraph 4 of Doc. NC0270E1.

Entries for Subheading 9305.91

2. In the English version to the three-dash entry, the following text appears “of machine guns, sub-machine guns, rifles and shotguns”. The corresponding French text reads “De mitrailleuses, de mitraillettes, ou de fusils et carabines comportant au moins un canon lisse”. It would appear that the texts are not completely aligned. The French version makes reference only to machine guns, sub-machine guns and shotguns. In paragraph 5 of Doc. NC0270E1, the following translations as suggested by the Canadian Administration were considered :

English : French :

Shotguns Fusils et carabines comportant au moins un canon lisse

Rifles Fusils et carabines

3. These translations were incorporated in the three-dash entries for subheading 9301.90. Since subheading 9305.91 covers parts and accessories of articles of heading 93.01, there is a need to make a specific reference to “rifles”. It would appear that there is no reference to “rifles” in the French version. To address this concern the following changes to the English and French versions are suggested :

English : --- Of machine guns, sub-machine guns, shotguns and rifles

French : --- De mitrailleuses, de mitraillettes, de fusils et carabines comportant au moins un canon lisse, ou d'autres fusils et carabines

4. This change would also align the entries for subheading 9305.91 with those of subheading 9301.90.

Definition of Firearms

5. As indicated by the Secretariat in Doc. NC0339E1, there is a discrepancy between the definition of antiques contained in the Firearms Protocol and in the text of heading 97.06. According to the Firearms Protocol, antique firearms are those which have been manufactured on or before 1899. For the purposes of the Harmonized System, however,

antique weapons are those with an age exceeding 100 years. With the passage of time, there will be an ever-widening chronological gap between these two definitions.

6. To address this anomaly, the Canadian administration proposes the creation of statistical breakouts to headings 97.05 and 97.06 as set out below :

97.05 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, palaeontological, ethnographical or numismatic interest.

- Articles of subheadings 9301.90, 9302.00, 9303.10, 9303.20, 9303.30, 9305.10, 9305.29 and 9305.91 :
 - Manufactured on or before December 31, 1899
 - Manufactured after December 31, 1899
- Other

97.06 Antiques of an age exceeding one hundred years.

- Articles of subheadings 9301.90, 9302.00, 9303.10, 9303.20, 9303.30, 9305.10, 9305.29 and 9305.91 :
 - Manufactured on or before December 31, 1899
 - Manufactured after December 31, 1899
- Other

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