



HARMONIZED SYSTEM
COMMITTEE

-
29th Session
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NC0529E1
(+ Annexes I and II)

O. Eng.

Brussels, 8 April 2002.

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

(Item IV.1 on Agenda)

Reference documents :

NC0138E2 (HSC/24)	NC0339E1 (HSC/26)
NC0149E1 (HSC/24)	NC0340E2, Annexes D and N (HSC/26 – Report)
NC0160E2, Annex D/2 (HSC/24 – Report)	NC0363E1 (HSC/27)
NC0180E1 (HSC/24)	NC0430E2, Annex D/2 (HSC/27 – Report)
NC0250E2, Annex D/2 (HSC/25 – Report)	NC0450E1 (HSC/28)
NC0270E1 (HSC/26)	NC0510E2, Annexes D and K (HSC/28 – Report)

I. BACKGROUND

1. At its 28th Session, the Committee continued its considerations vis-à-vis 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 Customs Administration.
2. With reference to the draft Recommendation as reproduced in Annex III to the working document, the Committee decided to delete the square brackets in the “Recommends” part of the Preamble and the “Requests” part at the end, thus giving administrations the possibility to group together two or more of the subdivisions referred to in the draft Recommendation.
3. Views were, however, divided with respect to the level of detail to be incorporated in the draft Recommendation. After some discussion the Committee concluded that, given the wording of the Preamble with respect to grouping together two or more of the subdivisions, the Canadian proposals could be taken as a basis for its review.

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4. To accommodate the US concern with respect to magazines with a capacity of more than ten rounds, it was suggested to insert further subdivisions in the subheadings concerned (i.e., in subheadings 9305.10, 9305.29 and 9305.91). However, to give delegations the possibility to reflect on this proposal during the intersession, the subdivisions were placed in square brackets.
5. Some French speaking delegations questioned the appropriateness of some expressions in the French version, in particular whether the reference to "à coulisse" in the subdivisions of subheading 9303.20 was correct, or should be replaced by "à culasse" (in the English version referred to as "bolt action"). The Director reminded delegations that the Secretariat had suggested using the former French term as a translation of the English term "pump-action", which suggestions had been adopted by the Canadian Administration. Following this statement, the Chairman invited French speaking delegations to verify the terminology which had been placed in square brackets and, where applicable, to come up with the appropriate wording.
6. The Committee also agreed to delete references to headings 97.05 and 97.06 in the draft Recommendation.
7. At the request of certain delegates, and in view of the relationship of this draft Recommendation to the Protocol concerning firearms covered by the UN Convention against transnational organized crime, the Secretariat was asked to contact the appropriate UN body during the intersession with a view to obtaining their comments and views on the draft Recommendation.
8. Following the instructions of the Committee, the Secretariat has contacted the UN Centre for International Crime Prevention and received their observations in a letter dated 1 February 2002. The letter, the paragraphs of which have been numbered to facilitate possible discussions, is reproduced in Annex I to this document.
9. During the intersession, the Secretariat also received a CD-ROM from the Canadian Customs Administration, containing an electronic file comprising examples of the various types of weapons. Given the size of the file (42 MB) the Secretariat has not reproduced it in an Annex. However, a hard copy will be available to delegates during the session.

II. SECRETARIAT COMMENTS

10. With respect to the scope of the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition (hereinafter : "Firearms Protocol"), the Note received from the UN Centre for International Crime Prevention indicates that the definition of "firearm" is a general term, based on similar terminology used in the domestic gun-control legislation of several Member States, and includes all "barrelled weapons" which expel, are designed to expel or may be converted so as to expel a shot, bullet or projectile by the action of an explosive. It is further clarified that four categories do not fall within the scope of the Firearms Protocol, i.e., (i) replica firearms, (ii) antique firearms, (iii) firearms which are not "portable", and (iv) deactivated firearms.
11. With respect to the four categories not falling within the scope of the Firearms Protocol, the Secretariat would like to offer the following comments. First, the term "replica" is not described in the Firearms Protocol, but the Secretariat understands it to mean an exact, non-working copy or model, whether or not on a smaller scale, assuming that, if it

were a working copy or model, it would not have been excluded. That being the case, the Secretariat considers that such replicas would not be classified in Chapter 93, but elsewhere, for example in heading 90.23, if for demonstrational purposes, in heading 97.05, if of historical interest, or in the heading according to the constituent material. Notwithstanding that, interested parties may wish to clarify the above assumption.

12. Second, the Committee decided not to insert references to antique weapons in headings 97.05 and 97.06.
13. Third, the Secretariat considers that there is no need to refer to “portable” in the draft Recommendation, given the descriptions of the various weapons and the subheadings involved.
14. Finally, the UN Centre for International Crime Prevention considers that the insertion of a separate entry for “deactivated firearms” could be helpful (see paragraph 3 of Annex I). The Secretariat, while leaving it to the Committee to decide, wonders whether it would be appropriate to insert in the draft Recommendation a reference to a category of commodities which is not covered by the Firearms Protocol.
15. With respect to parts, the UN Centre for International Crime Prevention has indicated that silencer devices, bipods, tripods, gun-sights and barrel extensions would probably not fall within the scope of the Firearms Protocol (see paragraph 5 of Annex I). Following this indication, delegations may wish to remove the references to these devices from the list. The Secretariat has placed the corresponding references in square brackets in Annex II.
16. The Secretariat has some doubts whether the insertion of a separate entry for “accessories” (which are classified in the Harmonized System with the parts) would be appropriate, given the likely problems which may occur in differentiating them from “parts”, and given the fact that they are not covered by the Firearms Protocol.
17. With respect to the terminology to be used in the French version, French speaking delegations had been invited to verify the reference which had been placed in square brackets (i.e., “A coulisse” in subheading 9303.20). At the time of preparing this document, the Secretariat has not received suggestions in this respect. Having said this, the Secretariat took a second look at the appropriate French wording and suggests the following amendments to the French version :
 - (i) Subheadings 9301.90 and 9305.91. Replace the word “Mitraillettes” by “Pistolets-mitrailleurs (mitraillettes)”, the latter also being used in the Explanatory Note to heading 93.01, second paragraph, Item (2);
 - (ii) Subheading 9303.20. The term “à coulisse” could be replaced by “à pompe”;
 - (iii) Subheadings 9305.10 (third entry) and 9305.29 (third entry). The part in brackets (if kept, see paragraph 15 above) could be replaced by “(crans et guidons de mire (avant et arrière))”;
 - (iv) Subheading 9305.10. Fourth entry. Replace “tenons de verrouillage” by “crochets de verrouillage”;
 - (v) Subheading 9305.10. Seventh entry with three dashes. Replace “plaquettes de poignée et plaquettes” by “plaquettes de crosse et plaques de couche”;

- (vi) Subheadings 9305.29 and 9305.91. The term “montures” could be replaced by the term “garnitures”;
 - (vii) Subheadings 9305.29 and 9305.91. Replace the term “porte-culasses” by “boîtes de culasse”; and
 - (viii) Subheading 9305.91. Delete “(guidons de mire avant et arrière)” (if kept, see paragraph 15 above) and substitute “(crans, hausses et guidons de mire (avant et arrière))”.
18. The Secretariat has placed the above suggestions in square brackets in Annex II to this document.
19. The Committee is also invited to decide on the appropriate wording in the French version of the first entry in subheading 9301.90, which was left in square brackets during the last session.
20. The entries that separately identify magazines with a certain capacity (i.e., in subheadings 9305.10, 9305.29 and 9305.91) were placed in square brackets, to give delegations the possibility to reflect on this proposal during the intersession. The Secretariat has not received observations from administrations with respect to the question whether or not to maintain these subdivisions. Delegations are invited to comment on the proposal. In this context, the Secretariat would like to remind delegations that the reference to grouping together two or more of the subdivisions in the Preamble of the draft Recommendation had been retained.
21. Finally, the Secretariat would like to inform delegations that, at its 173rd Session (March 2002), the Permanent Technical Committee adopted a draft Recommendation with respect to the Firearms Protocol, covering procedural issues.

III. CONCLUSION

22. The Committee is invited to consider the Canadian proposal with a view to preparing a draft Council Recommendation as set out in Annex II to this document, to be presented to the Council in June 2002, taking into account the Secretariat’s comments in paragraphs 10 to 21 above.

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Note from the UN Centre for International Crime Prevention

1. I wish to acknowledge receipt of your letter of 28 January 2002 concerning the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, addressed to Mr. Arlacchi, in which you have sought our views with respect to the relationship between the proposed WCO framework for classifying various firearms and related items and the Protocol.
2. Generally, all of the firearms and most of the other items listed would appear to fall within the ambit of the definitions of either "firearm" or "parts and components" set out in paragraphs 3 (a) and 3 (b) of the Protocol. The Protocol definition of "firearm" is a general term, based on similar terminology used in the domestic gun-control legislation of several Member States, and includes all "barrelled weapons" which expel, are designed to expel or may be converted so as to expel a shot, bullet or projectile by the action of an explosive. Excluded are replica firearms, antique firearms, and firearms which are not "portable". Article 9 of the instrument also sets out a standard for the deactivation of firearms, on the basis that many States Parties are likely to have domestic legislation which excludes permanently-deactivated firearms from their domestic definition of "firearm" and hence from any legislation implementing the Protocol.
3. With the exception of these four categories, however, the instrument applies to all "firearms" as one single class. Thus, while the WCO classifications will no doubt be useful to Member States whose domestic laws attach differing degrees of controls or restrictions to categories of firearms such as handguns, rifles or shotguns, they would not appear to be either beneficial or problematic for the purposes of the efforts of States to ratify, implement and administer the Protocol. Bearing in mind the foregoing provisions of the Protocol, some additional categories might prove useful, however. Given past problems encountered by law enforcement and Customs agencies with the use of improper or inadequate deactivation as a means to avoid domestic and import-export controls on firearms and parts or components, the incorporation and tracking of a category of "deactivated firearms" based on Article 9 might be seen as helpful.
4. Antique firearms (made prior to 1900) might also be classified separately, although this is less of a concern, since the failure to create a specific category would simply result in each such firearms being tracked within whichever of the existing categories applies to it. Finally, while the term "Portable" is not defined in the text, the *travaux préparatoires* (found in General Assembly document A/55/383/Add.3) provide that the intended meaning is to limit the definition of "firearm" to "...firearms that can be moved or carried by one person without mechanical or other assistance". This would appear to include all of the firearms listed in the proposed WCO classification without difficulty, but may be of relevance in other WCO classification schemes where it is necessary to distinguish between firearms and larger barrelled weapons, such as artillery pieces.
5. Regarding parts and components, the Protocol definition includes any part or component "designed for a firearm and essential to its operation", which would also include most of the items listed within a single category for purposes of administering the Protocol. Silencer devices, bipods, tripods, gun-sights and barrel-extensions would probably not fall within the ambit of the Protocol at all, since these are not essential parts, but the decision of the WCO to classify and track these would not appear to pose any difficulty or impediment to implementing the Protocol. Consideration could be given to the creation of a separate category of "accessories" to capture items such as silencers, which are used with firearms

and of obvious concern to Customs authorities, but which are not dangerous in isolation and are not themselves essential to the operation of a firearm.

6. Finally, in advising WCO members with respect to implementing any record-keeping or statistical repositories based on the proposed classification, it might be helpful to remind them that in order to implement the Protocol, it will be necessary for them to configure the various categories and their reporting and recording systems in a way which permits the separation of categories which are "parts and components" "firearms" and "ammunition". Since none of the proposed categories appears to combine complete firearms with any of these things, this would appear to be merely a question of configuration, as opposed to a substantive question of how to classify the items themselves.

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