



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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NC0696E1
(+ Annex)

O. Eng.

Brussels, 28 March 2003.

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTES

TO CHAPTER 39 AND HEADING 40.08

(Item VIII.10 on Agenda)

Reference documents :

NC0639E1 (HSC/30)

NC0655E2, Annex H/25 (HSC/30 – Report)

I. BACKGROUND

1. At its 30th Session, the Committee undertook a preliminary examination of the classification of a cellular plastics-covered nonwoven.
2. During this preliminary examination, the Committee agreed with the **Iranian** Administration that, in the General Explanatory Notes to Chapter 39 (Part entitled “Plastics and textile combinations”, item (d), second paragraph, it would be clearer if a reference to nonwovens and felts were added in the English version to indicate that these provisions applied not only to fabrics, but also to felts and nonwovens.
3. On 5 March 2003, the Secretariat received a note from the **EC** concerning a proposal to amend the General Explanatory Notes to Chapter 39 - Part entitled “Plastics and textile combinations”. This note is reproduced below.

II. NOTE FROM THE **EC**

4. "When considering the classification of a garment made from cellular plastics combined with knitted textile material solely for reinforcement, the **EC** spotted a possible misalignment between the scope of the French and English versions of the Explanatory Notes to Chapter 39 in relation to the legal texts of Note 1 to Chapter 59.

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File No. 2951

Existing text of Note 1 to Chapter 59

EN : "Except where the context otherwise requires, for the purposes of this Chapter the expression "textile fabrics" applies only to the woven fabrics of Chapters 50 to 55 and headings 58.03 and 58.06, the braids and ornamental trimmings in the piece of heading 58.08 and the knitted or crocheted fabrics of headings 60.02 to 60.06"

FR : "Sauf dispositions contraires, la dénomination "tissus", lorsqu'elle est utilisée dans le présent Chapitre, s'entend des tissus des Chapitres 50 à 55 et des n°s 58.03 et 58.06, des tresses, des articles de passementerie et des articles ornementaux analogues en pièces du n° 58.08 et des étoffes de bonneterie des n°s 60.02 à 60.06."

5. In fact, the French version of Note 1 to Chapter 59 defines the scope of "*la dénomination 'tissus', lorsqu'elle est utilisée dans le présent chapitre*".
6. Note 2 (a) (5) to Chapter 59 in the French version refers to "*des feuilles, plaques ou bandes en matière plastique alvéolaire, combinées avec du tissu et dans lesquelles le tissu ne sert que de support*".
7. Paragraph (d) of the General Explanatory Notes to HS Chapter 39 entitled "Plastics and textile combinations" (FR "*Matières plastiques combinées à des matières textiles*") (page 719) mentions, *mutatis mutandis*, "*des plaques, feuilles ou bandes en matière plastique alvéolaire, combinées avec du tissu, du feutre ou du non-tissé, dans lesquelles la matière textile ne sert que de support*". The paragraph therefore uses the word "*tissu*", but without incorporating in Chapter 39 the definition given in Note 1 to Chapter 59. This would make the term "*tissu*" very restrictive.
8. It seems that this problem does not arise with the English version as Notes 1 and 2 (a) (5) to Chapter 59 and paragraph (d) of the General Explanatory Notes to Chapter 39, quoted above, all use the same term "textile fabrics".

PROPOSAL :

9. The **EC** is of the opinion that it might be appropriate to proceed to an amendment of the HS Explanatory Notes to Chapter 39 – General : "Plastics and textile combinations" - in order to ensure their uniform interpretation in the two official versions of HS Chapter 39 :

GENERAL EXPLANATORY NOTES TO CHAPTER 39 (page 719)
Plastics and textile combinations
Paragraph (d)

CONSIDERATIONS GENERALES DU CHAPITRE 39. (page 719)
Matières plastiques combinées à des matières textiles,
Alinéa (d)

New version :

EN : "(d) Plates, sheets and strip of cellular plastics combined with textile fabrics (as defined by Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes."

(the second paragraph would remain unchanged)

FR : "d) *les plaques, feuilles ou bandes en matière plastique alvéolaire, combinées avec du tissu (tel que défini à la Note 1 du Chapitre 59), du feutre ou du nontissé, dans lesquelles la matière textile ne sert que de support.*"

(The second paragraph would be unchanged)."

III. SECRETARIAT COMMENTS

10. As the questions raised by **Iran** and the **EC** both concern an amendment to the General Explanatory Notes to Chapter 39 - Part entitled "Plastics and textile combinations", the Secretariat considered it preferable to deal with the two questions together, in a single document.
11. The Secretariat wishes to point out once again that the expression "present merely for reinforcing purposes", as used in the General Explanatory Notes to Chapter 39 and in Note 3 to Chapter 56 and Note 2 to Chapter 59, was originally defined in the Harmonized System only for certain products made from vulcanised rubber and textile combinations.
12. For information, this definition can be found in the Explanatory Note to heading 40.08, page 762, fourth paragraph, item (A), second paragraph. It reads as follows :

English version

"(A) Plates, sheets and strip of cellular rubber combined with felt, nonwovens, knitted or crocheted fabric or other textile fabric, provided that these textile materials are present merely for reinforcing purposes.

In this respect, unfigured, unbleached, bleached or uniformly dyed textile fabrics, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes. Figured, printed or more elaborately worked textiles and special products, such as pile fabrics, tulle and lace, are regarded as having a function beyond that of mere reinforcement."

French version

"A) Les plaques, feuilles et bandes en caoutchouc alvéolaire associées avec du tissu, du feutre, des nontissés ou des étoffes de bonneterie et dans lesquelles ces dernières matières ne servent que de support.

On considère à cet égard comme jouant le rôle d'un simple support, lorsqu'ils sont appliqués sur une seule face de ces plaques, feuilles et bandes, les produits textiles non façonnés, écrus, blanchis ou teints uniformément. En revanche, ceux qui sont façonnés, imprimés ou ont subi une ouvraison plus poussée, ainsi que les produits textiles spéciaux tels que velours, tulle et dentelle, sont considérés comme assurant une fonction supérieure à celle d'un simple support."

13. Moreover, the General Explanatory Notes to Chapter 40 – Part entitled “Rubber and textile combinations”, in item (d) on page 750, state that this Chapter covers :

English version

“Plates, sheets and strip of cellular rubber, combined with textile fabrics (as defined in Note 1 to Chapter 59), felt or nonwovens, where the textile is present merely for reinforcing purposes.”

French version

“Les feuilles, plaques ou bandes en caoutchouc alvéolaire combinées avec du tissu (tel que défini à la Note 1 du Chapitre 59), du feutre ou du nontissé, dans lesquelles la matière textile ne sert que de support.”

14. At the same time, in the General Explanatory Notes to Chapter 39 – Part entitled “Plastics and textile combinations”, on page 719 of the Explanatory Notes, item (d) specifies that this Chapter covers :

English version

"(d) Plates, sheets and strip of cellular plastic combined with textile fabrics, felt or nonwovens, where the textile is present merely for reinforcing purposes.

In this respect, unfigured, unbleached, bleached or uniformly dyed textile fabrics, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes. Figured, printed or more elaborately worked textiles (e.g., by raising) and special products, such as pile fabrics, tulle and lace and textile products of heading 58.11, are regarded as having a function beyond that of mere reinforcement.”

French version

"d) Les plaques, feuilles ou bandes en matière plastique alvéolaire combinées avec du tissu, du feutre ou du nontissé, dans lesquelles la matière textile ne sert que de support.

On considère à cet égard comme jouant le rôle d'un simple support, lorsqu'ils sont appliqués sur une seule face de ces plaques, feuilles et bandes, les produits textiles non façonnés, écrus, blanchis ou teints uniformément. En revanche, ceux qui sont façonnés, imprimés ou ont subi une ouvraison plus poussée (le grattage, par exemple), ainsi que les produits textiles spéciaux tels que velours, tulles, dentelle et les produits textiles du n° 58.11, sont considérés comme assurant une fonction supérieure à celle d'un simple support.”

15. With regard to the scope of the expression “ne sert que de support” (“present merely for reinforcing purposes”), the French term “produits textiles” (“textile fabrics” in English) used in the General Explanatory Notes to Chapter 39, on page 719 – Part entitled “Plastics and textile combinations”, item (d), second paragraph, covers not only the textile products defined in Note 1 to Chapter 59, but also felts and nonwovens.

16. However, the English term “textile fabrics” used in that Note could be interpreted as covering only woven fabrics, braid and ornamental trimmings, and knitted or crocheted fabrics (as indicated in Note 1 to Chapter 59), thus excluding felts and nonwovens, as this is the same term as is used in item (d), first line of the General Notes to Chapter 39, which itself covers only textile fabrics within the meaning of Note 1 to Chapter 59.
17. In order to remove any ambiguity, the Secretariat proposes either that the term “textile fabrics” be replaced by “textile products”, or that a reference to felts and nonwovens be inserted after the words “textile fabrics” in the English version, on page 719 of the Explanatory Notes. These two proposals are shown in square brackets in the Annex to this document.
18. Turning to the Note from the **EC**, the Secretariat wishes to point out that the first paragraph of the Part entitled “Plastics and textile combinations” specifies, in the second sentence, that “Otherwise, the classification of plastics and textile combinations is essentially governed by Note 1 (h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59”.
19. Item (c) of this Part is, in reality, the counterpart of Note 2 (a) (2) to Chapter 59, whereas item (d) is the counterpart of Notes 2 (a) (5) to Chapter 59 and 3 (c) to Chapter 56.
20. The term “tissus” in the French version of the General Explanatory Notes to Chapter 39 is therefore, in the Secretariat’s view, included in the context of Note 2 to Chapter 59 and covers not only the textile fabrics of Chapters 50 to 55, but also the other textile products referred to in Note 1 to Chapter 59, including knitted or crocheted fabrics.
21. Nevertheless, the Secretariat agrees with the **EC** that a reference to Note 1 to Chapter 59 would offer the advantage of ensuring that the English and French versions of Chapter 39 would be aligned where references to textiles are concerned, in addition to ensuring that the texts at issue are aligned on those which already exist in the Explanatory Notes to Chapter 40.

IV. CONCLUSION

22. The Committee is invited to rule on the draft amendments to the Explanatory Notes to Chapter 39 and heading 40.08 which are reproduced in the Annex to this document, in the light of the comments by the **EC** and the Secretariat’s comments above.

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