



HARMONIZED SYSTEM
COMMITTEE

NC0716E1

-
31st Session

O. Fr.

Brussels, 24 April 2003.

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTE TO HEADING 95.05

(PROPOSAL BY EC)

(Item VIII.18 on the Agenda)

Reference documents :

NC0635E1(HSC/30)
NC0704E1(HSC/31)

NC0655E2, Annexes H/21 and L/23 (HSC/30- Report)

I. BACKGROUND

1. Subsequent to the preparation of Doc. NC0704E1, the Secretariat received the following Note from the **Canadian** Administration, containing its comments on the possible amendment of the Explanatory Note to heading 95.05.

II. NOTE FROM THE CANADIAN ADMINISTRATION

2. "This is a request by the **Canadian** Administration for further consideration by the Harmonized System Committee in regard to its current review of the Explanatory Note (EN) to heading 95.05. In the light of the amending text placed in square brackets in Annex L/23 to Doc. NC0655B2 following the 30th Session, we believe that additional changes are required to clarify the legal heading text.
3. I should first explain that the **Canadian** Administration supports the Committee's desire to achieve a better linguistic balance between the English and French texts at issue. Our concerns are more of a technical nature and rest with the broad nature of the wording proposed in Annex L/23 to amend Part (A) (1), page 1917 of the Explanatory Notes to heading 95.05. If approved without further qualification, it is our belief that the new Part (A) (1) may result in the unintended transfer of a multiplicity of goods to heading 95.05.
4. The wording "Festive decorations of a kind used to decorate rooms, tables, etc." appears to invite an even broader interpretation of the legal heading text than the current version of Part (A) (1). We are concerned that importers would see it as expanding the scope of heading 95.05 to encompass a wide range of utility goods traditionally classified according to their material or nature elsewhere in the Nomenclature. In the absence of the additional

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changes proposed below, this amendment would compound the problems we are currently experiencing in our administration of heading 95.05.

5. In **Canada**, the current EN to heading 95.05 is subject to increasing scrutiny by the importing community and courts. More and more importers are questioning our interpretation of a “festive article”. Apart from traditional, inexpensive non-durable articles like garlands and Chinese lanterns, we are being called upon to classify a variety of utility goods under heading 95.05. The list includes candles (heading 34.06) designed for use in birthday cakes as well as carpets, table linen and even kitchenware containing some sort of festive decoration, emblem or motif.
6. In conjunction with the amendments proposed for linguistic alignment purposes, the following additional changes to the Explanatory Notes should restore the intended scope of heading 95.05. The amendment proposed by the **Canadian** Administration is intended to ensure that this provision is restricted to articles designed principally for festive occasions, carnivals or other entertainment purposes. We believe heading 95.05 should exclude those products that, while containing some sort of festive decoration or emblem, are essentially designed for regular use in a domestic, office, or other non-festive environment :

Explanatory Notes. Page 1917.

1. Part (A)

Add the following new paragraph after the exclusion sentence appearing immediately below item (4) :

“The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen; kitchen linen.”

Explanatory Notes. Page 1918.

2. Exclusion Notes

Delete Note (b) and insert the following :

“(b) Candles (**heading 34.06**).”

III. SECRETARIAT COMMENTS

7. The Secretariat wishes to draw the Committee’s attention to the fact that, as indicated in Doc. NC0704E1, the amendments under consideration are not intended to result in a change of scope. An examination of the comments reproduced above reveals that the purpose of the proposal is to further clarify the legal text of heading 95.05. Thus, the proposed texts put forward by **Canada** – to be inserted as exclusions – serve to supplement the existing Explanatory Notes.
8. Therefore, the Secretariat considers that these new indications will make it possible to avoid any risk of misclassification in this heading of articles (other than toys) which fall to be classified elsewhere in the Nomenclature.

9. In the light of these arguments the Secretariat could agree that as drafted, the text of Part (A) (1) of the Explanatory Note to heading 95.05 might generate transfers of products from other headings. In order to remove this risk, the Secretariat can support the **Canadian** proposal, which serves to clarify the text at issue.

IV. CONCLUSION

10. The Committee is invited to take note of the **Canadian** Administration's comments during its examination of this Agenda item.
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