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HARMONIZED SYSTEM
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-
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(+ Annex)

O. Fr.

Brussels, 7 May 2003.

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTE TO HEADING 90.21

(Item IX.11 on Agenda)

Reference documents :

NR0395E1 (RSC/27)
NR0400E1 (RSC/27 – Report)

I. BACKGROUND

1. At its 27th Session (March 2003), the Review Sub-Committee held a preliminary exchange of views on the **EC** proposal for a possible amendment of the structured nomenclature and the Explanatory Note to heading 90.21, in the light of Doc. NR0395E1.
2. The request from the **EC** (letter No. **TAXUD/B5/AAD(03)13150**, of 11 February 2003) consisted of two proposals :
 - (1) amending the texts of heading 90.21 and subheading 9021.10 under the Article 16 procedure, by replacing the words "Splints and other fracture appliances" by "Splints and other appliances for the treatment of fractures, dislocations and joint injuries" – by analogy to a reference already existing in the French version of the corresponding Explanatory Note – in order to take account of the technical progress achieved in this field, as a result of which the same appliances could be used to treat fractures, dislocations and joint injuries;
 - (2) amending the Explanatory Note to this heading by corrigendum, with the English version being aligned, for the sake of consistency, on the French, which is more explicit.

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This alignment would involve adding the expression "dislocations or joint injuries" to the list of uses given in the first paragraph of Part II of the relevant Explanatory Note (page 1815).

3. The Review Sub-Committee agreed that it would deal with this matter in two stages :
 - (1) submit to the Harmonized System Committee, at its May 2003 (31st) Session, the problem regarding the alignment of the English and French versions of the Explanatory Notes, which was not to be construed as a broadening of the scope of the legal text of heading 90.21;
 - (2) study the possibility of amending the legal texts at the next Review Sub-Committee session in September, in the light of whatever opinions and comments might emerge in the course of the HS Committee's discussions in May.
4. The Sub-Committee therefore instructed the Secretariat to prepare a document on the amendment of the Explanatory Note to the heading, for discussion at the present session of the Harmonized System Committee.

II. NOTE FROM THE EC

5. With regard to the amendment of the Explanatory Notes, the Secretariat has selected the following extract from the Note by the EC :

"Having said this, the EC is of the opinion that there is a lack of alignment between the French and English versions of the first paragraph of Part II of the Explanatory Note to heading 90.21 mentioned above. The EC therefore proposes to align the English version on the text of the French version :

Present text :

English : "These may be used either to immobilise injured parts of the body (for extension or protection), or for setting fractures."

French : "Les articles et appareils pour fractures, luxations ou lésions articulaires des membres, de la poitrine, etc., servent soit à immobiliser les organes atteints, à en permettre l'extension ou encore à les protéger des atteintes extérieures, soit à réduire les fractures."

Proposed new wording :

English : "These may be used either to immobilise injured parts of the body (for extension or protection), or for setting fractures, dislocations or joint injuries."

French : Unchanged

Motive of the proposal :

Reasons of practicality and achieving coherence until an amendment of the legal text of the Nomenclature is effected.

III. SECRETARIAT COMMENTS

6. The Secretariat agrees that, as was stressed by the **EC**, there is a genuine problem of alignment where the two versions of the Explanatory Note to this heading are concerned, and in particular with regard to the first paragraph of Part II. The French version of this Note includes :
- (1) a more detailed list of the various conditions referred to in subheading 9021.10, covering fracture appliances, than does the English text;
 - (2) a reference to "organes" (organs), which again is not present in the English text;
 - (3) more complex wording in relation to the use and purposes of the fracture appliances covered.
7. Given that this lack of alignment was already mentioned as far back as the preparatory work for the 2002 version of the Harmonized System, the Secretariat has carried out a comparison of the texts of the two versions in an attempt to pinpoint any alignment problem and, if necessary, put forward suitable proposals to rectify it.
8. For this purpose, the Secretariat has consulted the following documentation :
- (1) "Encyclopédies Universalis", "Larousse universel", "Larousse médical" and the "Petit Larousse de la médecine";
 - (2) The Internet sites of the Orthopaedic Hospital of French Switzerland (www.hospvd.ch), of the Joseph Fourier University in Grenoble (www-sante.ujf-grenoble.fr), of Vulgaris médical (www.vulgaris-medical.com), and of Hachette Multimédia (fr.encyclopedia.yahoo.com),
 - (3) The Explanatory Notes to both the CCCN and the Harmonized System, as well as various Nomenclature Committee and HS Committee documents.

Appliances for setting fractures, dislocations or joint injuries

9. A study of the documentation consulted has revealed that this wording, although detailed, has the potential to cause confusion. By definition, the term "fracture" applies to the breaking of a bone or hard cartilage following a violent trauma, "dislocation" is the displacement of the ends of the two bones which form a joint, leading to a loss of normal contact between the two surfaces comprising the joint.
10. For any fracture, the purpose of the treatment is to return the bone to the correct position by a manoeuvre known as "reduction", which may be either manual or surgical, and which involves placing the two edges of the broken bone in contact with each other, and in perfect alignment, so that the bone can knit together in the correct position and the bone regains its normal shape. Orthopaedic or surgical means are employed in order to achieve this.

11. Thus defined, fractures and dislocations are always accompanied by related injuries (vascular, skin, muscle) which also require treatment in order to realign the affected parts of the body so as to facilitate the formation of the bony callus. Therefore, the words "joint injuries" would seem inappropriate here, because :
- (1) "injury" is a generic term covering damage to the body, and as such this term is not confined to fractures or even orthopaedic treatment in general, which applies only to the locomotor system;
 - (2) joint injuries, of which there are a great many, can arise as a result of accidental causes (twists, sprains, torn ligaments), but they can also result from immuno-induced attacks on the joints, and they may be inflammatory in nature or may arise because of metabolic problems associated with tissue ageing.
12. It follows from this that not all joint injuries are treated solely through the use of fracture appliances within the meaning of heading 90.21; they can also be treated by other means (use of analgesics, anti-inflammatory drugs, etc.).
13. The Secretariat has concluded from the foregoing that the effect of the list given in the French version, and of the suggested addition to the English version, is to broaden the scope of this heading and subheading beyond that dictated by the legal text.

The use of the term "organes" ("organs") in the French version

14. This is another generic term, meaning "part of an animal or vegetable body adapted for a special vital function". Thus the heart, the eye and the ear are organs in the anatomical sense, but they are not subject to fractures or dislocations within the meaning of heading 90.21. It must be recalled that this term, encountered only in the French version, was criticized in the Committee at its 27th Session, during the work on the 2002 HS review, during discussions about amending the Explanatory Note to this heading.
15. In this connection, reference should be made to Docs. 40.939 and 41.470, in which the **US** and **Canadian** Administrations suggested that it be replaced by a more appropriate term. At the time, the Delegate of **Canada** proposed that "organes" be replaced by "parties du corps", which would correspond to the English text ("parts of the body").
16. Thus, even if it is accepted that a fractured limb is an organ, it would still be beneficial to make this clarification to the French version of the Explanatory Note to heading 90.21, which covers only the treatment of the locomotor system, thus avoiding any broadening of the scope of the headings and subheadings of the Nomenclature.

Text of the existing Explanatory Note to heading 90.21

17. Whereas the French text of the first paragraph of Part II of this Note lists the various types of appliances involved, the English version states clearly how fracture appliances are used, reading "These may be used either to immobilise injured parts of the body (for extension or protection), or for setting fractures". This shows clearly that these appliances are used either :
- (a) to immobilise the affected limbs or parts of the body in order to prevent the fracture site from opening, as normal formation of the bony callus is possible only after a certain period of immobilization (at least two months);

- (b) to reduce fractures, this being the precise technical term for reconstituting the bone or the fractured fragment of bone.

18. After analysing the technical literature, the Secretariat considers that for a perfect alignment of the two versions, the new wording of this paragraph should be as follows :

- (a) the titles of this second part of the Explanatory Notes should be aligned in both versions, firstly for the sake of consistency with the legal text, and secondly in order to correctly render in French the English words “splints and other fracture appliances”, which do not correspond to the existing French “articles et appareils pour fractures” – the wording “attelles et autres articles et appareils pour fractures” would be more appropriate in the French version.

- (b) the first paragraph of this Part should also be aligned in both versions, to read as follows :

English : "Fracture appliances may be used either to immobilise injured parts of the body (for extension or protection), or for setting fractures."

French : "Les articles et appareils pour fractures servent soit à immobiliser les segments des membres déplacés à la suite de fractures, luxations et lésions associées (pour en permettre l'extension ou encore pour les protéger des atteintes extérieures), soit à réduire les fractures."

19. Thus, the alignment of the first paragraph should be based primarily on the English version, for the following reasons :

- (1) in the French version, the expression “segments des membres” or “parties du corps” is more precise than the generic term “organes”. It is also closer to the English “parts of the body”, as it relates to parts of the body displaced by fractures or dislocations;
- (2) in the French version, the conjunction “et” (and) should be used in place of “ou” (or) between “luxation” (dislocations) and “lésions” (injuries), to take account of reality in two respects :
 - (a) any fracture or dislocation inevitably results in injuries reflected by a sharp pain, inability to make certain movements, bruising or deformity, whereas the use of the conjunction “ou” (or) in this context would suggest an alternative or equivalent, which is not the case here;
 - (b) this conjunction “et” (and), which is not present in the English version because it is worded differently, was used in the French text of the equivalent Explanatory Note in the CCCN (on page 1589, the Explanatory Note to heading 90.19, which became HS heading 90.21). This “et” (and) was replaced by an “ou” (or) during the passage from the CCCN to the Harmonized System, as is shown in Doc. 29.027 and in Annex II to Doc. 28.830;
- (3) still in the French version, the use of the expression “lésions associées” (related injuries) in place of “lésions articulaires” (joint injuries) is intended to make this Explanatory Note more logical, firstly because any fracture or dislocation will be accompanied by a number of related injuries (vascular, neurological, cartilage, skin...) which must be treated at the same time in order to return the fractured limb to its original condition, and secondly because joint injuries may – as indicated earlier –

arise not only as a corollary to a fracture, but also as a result of a degenerative process (arthritis), an inflammation (arthrosis) or a tumour;

- (4) again in the French version, the insertion of the words “pour en permettre l’extension ou pour les protéger” is based on the existing English (“for extension or protection”) and makes this phrase easier to understand, as the existing French text is ambiguous.

21. There is also a lack of alignment between the two versions of the second paragraph of Part II of this Explanatory Note, as the French version includes, in the fifth line, after the word “tubulaires”, the words : “destinés à remplacer les gouttières ou attelles, etc.”, which have no equivalent in the English version. This omission from the English text should be rectified by inserting in the 4th line, after “tubing”, the words : “to be used in the place of splints or cradles, etc.”.

22. While drawing attention to the conclusions of the Review Sub-Committee’s discussions, the Secretariat invites the Committee to express its own views, not only about the alignment of the two versions of the Explanatory Notes, but also on the question of whether or not it is necessary to amend the legal texts and, if so, what factors should be taken into consideration in this context.

23. For this purpose the Secretariat has reproduced in the Annex to this document the proposal by the **EC**, together with an alternative proposal; it is for the HS Committee to decide which text should be taken into consideration in order to achieve greater clarity and perfect alignment between the two versions of the Explanatory Notes.

IV. CONCLUSION

24. On the basis of the information provided above, the Committee is invited to :

- (1) rule on the proposals to align the Explanatory Note to heading 90.21, as formulated by the **EC** and the Secretariat;
- (2) express its views on the factors to be taken into consideration by the Review Sub-Committee for the amendment of the legal texts of heading 90.21 and subheading 9021.10.

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