



HARMONIZED SYSTEM
COMMITTEE
-
32nd Session
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NC0765E1
(+ Annex)

O. Fr.

Brussels, 3 October 2003.

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTES
TO HEADINGS 61.01 AND 61.10 (PROPOSAL BY THE EC)
(Item VI.14 on Agenda)

Reference documents :

NC0713E1 (HSC/31)
NC0730E2, Annex IJ/7 (HSC/31 – Report)

I. BACKGROUND

1. At its 31st Session, the Harmonized System Committee examined a Note from the EC which looked at the appropriateness of the existing Explanatory Notes to headings 61.01 and 61.10 and, in particular, the difficulty of interpretation and translation of the word “waistcoat” in the various languages, other than French and English, used in the European Community.
2. It was pointed out that there were two possibilities, namely, (i) to consider that the word “waistcoats” in the text of heading 61.10 covered all waistcoats, without exception, and that the Explanatory Note to that heading, which excluded “padded waistcoats”, incorrectly restricted the scope of heading 61.10 or (2) to consider that the “padded waistcoats” to which the Explanatory Note referred were not real waistcoats, nor the similar articles referred to in the text of heading 61.10, but rather articles similar to the anoraks, wind-cheaters and wind-jackets of headings 61.01 and 61.02.
3. The EC Delegate also pointed out that “padded waistcoats” were only mentioned as one example among others in the Explanatory Note to heading 61.01. He therefore proposed deleting the reference to these items, especially as they were not, in his view, an appropriate

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File No. 2978

example and the deletion would not affect their classification in view of the fact that the legal texts were not amended.

4. However, other delegates stated that they were unable to express an opinion on the deletion without having a clearer idea of the nature of the goods and their classification. They considered that simply deleting the reference to "padded waistcoats" from the Explanatory Note concerned might result in these items of clothing being transferred from one heading to another.
5. Following this exchange of views, during which it was also pointed out that administrations needed time for reflection, the Committee decided to continue its examination of this question at its next session, in order to determine whether the existing Explanatory Notes should be amended.

II. SECRETARIAT COMMENTS

6. At the time of drafting of this document, the Secretariat had not received any additional information or indications about this Agenda item.
7. The Secretariat continues to hold the view that the padded waistcoats at issue are more similar to the anoraks, wind-cheaters and wind-jackets of headings 61.01 and 61.02 than to the actual waistcoats of heading 61.10.
8. Even though the text of heading 61.10 refers specifically to waistcoats, in the Secretariat's view this should not be taken to mean that padded waistcoats must automatically fall in that heading.
9. As the **EC** pointed out in its Note, which is appended hereto for ease of reference, the term "similar" appears in the texts of all three headings concerned.
10. If the Committee were to agree, as does the Secretariat, that padded waistcoats are not true waistcoats, nor other garments similar to those referred to in the text of heading 61.10, but rather garments similar to those referred to in the text of heading 61.01 (61.02), then it would be logical to classify them in the latter headings, by application of General Interpretative Rule 1 (terms of the headings), even if the word "waistcoats" does appear in the text of heading 61.10.
11. This would make it perfectly correct for the current Explanatory Notes to stipulate that padded waistcoats are excluded from heading 61.10 and fall to be classified in heading 61.01 or 61.02, as appropriate.
12. The Secretariat also wishes to point out that these references were inserted when the Harmonized System entered into force on 1 January 1988, and that the amendments made to the Explanatory Notes for that purpose were approved by the Nomenclature Committee at its 49th Session in October 1982 (see Annex A/XXX to Doc. 28.840).
13. However, it has not been possible to find any explanation of the background to, or the reasons for, the request to insert these references in the Explanatory Notes. It does seem

clear, though, that the intention was to specify that these garments could not be assimilated to the waistcoats of heading 61.10 and were in fact garments similar to those classified in heading 61.01 (61.02), thus ruling out their classification in any other heading of Chapter 61, including in particular heading 61.14.

14. The Secretariat therefore leaves it to the Committee to decide whether the Nomenclature and the Explanatory Notes to headings 61.01 and 61.10 should be amended, it being noted that the English text of heading 61.10 contains an editorial error, both in the heading text and in the Explanatory Note, as “waist-coats” is shown hyphenated instead of as a single word. This error could be corrected by Corrigendum.

III. CONCLUSION

15. The Committee is invited to rule on the advisability of amending the Nomenclature and the Explanatory Notes to headings 61.01 and 61.10, in the light of the EC's remarks and the Secretariat comments reproduced above.

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NOTE BY THE EUROPEAN COMMUNITY

(reproduced in paragraphs 2 to 9 of Doc. NC0713E1)

“The EC wishes to ask the HS Committee to consider whether the Explanatory Notes to headings 61.01 (61.02) and 61.10 are inconsistent with the legal description of heading 61.10 of the Nomenclature annexed to the HS Convention.

Waistcoats are included without any qualification in the description of heading 61.10, and it could therefore be deduced, by direct application of General Rule 1 for the interpretation of the Nomenclature that knitted or crocheted waistcoats fall under that heading. However, the last paragraph of the Explanatory Note for this heading states that “The heading also excludes padded waistcoats of heading 61.01 or 61.02.” (French version : “sont également exclus les gilets matelassés des n°s 61.01 ou 61.02”). At the same time, the Explanatory Notes to heading 61.01 state that the heading includes padded waistcoats. The Explanatory Notes to heading 61.01 apply *mutatis mutandis* to articles of heading 61.02.

One might deduce that these Explanatory Notes conflict with the legal description of the Nomenclature and incorrectly restrict the scope of heading 61.10 and broaden the scope of headings 61.01 and 61.02.

If the Committee concurs with this view, the parts of the Explanatory Notes found to be incorrect would be deleted. One might also consider drafting a note to 61.10 indicating that “padded waistcoats” are included under that heading and that heading only.

However, the Committee may consider that the “padded waistcoats” (“*gilets matelassés*”) to which the existing Explanatory Notes refer are not real waistcoats (“*gilets*”), nor the similar articles referred to in the description of heading 61.10, but rather articles similar to the anoraks, wind-cheaters and wind-jackets referred to in the descriptions of headings 61.01 and 61.02. The word “similar” appears in the description of all three headings.

In this connection we would point out that according to the study we have carried out, the French word “*gilets*” includes garments with and without sleeves, whereas the English word “waistcoats” refers only to garments without sleeves.

In any case, if the Committee accepts the second hypothesis, the existing Explanatory Notes would be entirely compatible with the present legal description of heading 61.10 and the Committee could simply confirm that the Explanatory Notes are appropriate and/or clarify them by adding a new sentence confirming the characteristics of “padded waistcoats” (“*gilets matelassés*”).

The EC would be grateful if the HS Committee would give its views on the issue we have been studying and state whether it considers the present Explanatory Notes, which exclude “padded waistcoats ... knitted or crocheted” (“*gilets matelassés en bonneterie*”) from heading 61.10 and classify them under headings 61.01 and 61.02, to be appropriate.”
