



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
COMMITTEE

-
23rd Session
-

NC0090E2

(HSC/23/May 99)

O. Eng/Fr.

H9-4

Brussels, 14 May 1999.

REPORT TO THE CUSTOMS CO-OPERATION COUNCIL
ON THE TWENTY-THIRD SESSION
OF THE HARMONIZED SYSTEM COMMITTEE

Note : This Report is divided into four parts :
PART I - Body of the Report and Annexes A to L
PART II - Annex M
PART III - Annexes N to P, R and S
PART IV - Annex Q (Draft Article 16 Recommendation)

1. The Harmonized System Committee held its 23rd Session from 3 to 14 May 1999 at the Headquarters of the World Customs Organization in Brussels under the chairmanship of Mr. J.-L. ROBYR (Switzerland).
2. The following 49 Members (48 countries and one Customs or Economic Union) were represented :

Countries :

ALGERIA	FINLAND	NORWAY
AUSTRALIA	FRANCE	PAKISTAN
BANGLADESH	HUNGARY	POLAND
BELGIUM	INDONESIA	ROMANIA
BRAZIL	IRELAND	SAUDI ARABIA
BURKINA FASO	JAPAN	SENEGAL
CANADA	JORDAN	SLOVAKIA
CHINA	KENYA	SOUTH AFRICA
CONGO (Dem. Rep. of)	KOREA (Rep. of)	SRI LANKA
CÔTE D'IVOIRE	LIBYAN	SUDAN
CROATIA	ARAB JAMAHIRIYA	SWEDEN
CYPRUS	MADAGASCAR	SWITZERLAND
CZECH REPUBLIC	MALAYSIA	THAILAND
DENMARK	MOROCCO	TURKEY
ESTONIA	NETHERLANDS	UGANDA
FIJI	NEW ZEALAND	UNITED KINGDOM
		UNITED STATES

Customs or Economic Union

EUROPEAN COMMUNITY (EC).

3. The following 4 Members of the Council and 7 international organizations were represented by observers :

COLOMBIA
KUWAIT
MAURITANIA
UKRAINE

BASEL CONVENTION SECRETARIAT (UNEP)
INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL CONTAINERS BUREAU (ICB)
INTERNATIONAL TRADE CENTRE-UNCTAD/WTO
ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW)
OZONE SECRETARIAT (UNEP)
WORLD TRADE ORGANIZATION (WTO).

4. A list of the delegates and observers who attended the meeting is reproduced in Annex S to this Report.

I. ADOPTION OF THE AGENDA
(Doc. NC0001E2)

5. The Committee adopted the Agenda reproduced in Annex A to this Report. This Annex also serves as the "Table of Contents".

II.1. POSITION REGARDING CONTRACTING PARTIES
TO THE HS CONVENTION AND RELATED MATTERS
(Doc. NC0003E1)

6. The Committee welcomed Venezuela and Uzbekistan as the 96th and 97th Contracting Parties to the HS Convention.
7. The Committee also took note of the other information provided in Doc. NC0003E1 and the Annex thereto.

II.2. REPORT OF THE POLICY COMMISSION (40th Session)
(Doc. NC0004E1)

8. The Committee took note of the information contained in Doc. NC0004E1.
9. In this connection, Mr. H. KAPPLER, the Director of Tariff and Trade Affairs, noted that all important policy issues relating to the Policy Commission's 40th Session were dealt with as separate questions under Item III.

II.3. APPROVAL OF DECISIONS TAKEN BY THE HSC
AT ITS 22nd SESSION
(Docs. 42.823, NC0005E1 and NC0085E1)

10. The Committee took note of the communication from the Secretariat that the decisions taken by the Committee at its 22nd Session were deemed approved by the Council, in accordance with Article 8.2 of the Harmonized System Convention, except for the following five decisions in respect of which reservations had been entered by the named administrations :
- One by the Norwegian Administration concerning the "classification of "chicken sauce"" (Doc. 42.750/G/15).
 - One by the European Community concerning the "classification of various items of networking equipment" (Doc. 42.750/G/5).
 - One by the European Community concerning the "definition of the term "telecommunication" of heading 85.17 vis-à-vis heading 84.71, dividing line between "units" and "parts", and classification of the "ENW-9500-F Fast Ethernet Adapter"" (Doc. 42.750/G/24).
 - One by the United States Administration concerning the "classification of limes referred to as "Citrus latifolia"" (Doc. 42.750/G/13).
 - One by the United States Administration concerning the "classification of the "FIRE 9000" and "FIRE 1000" apparatus" (Doc. 42.750/G/10).
11. Referring to Doc. NC0085E1, the Director informed the Committee that the Swiss Administration had withdrawn its reservation concerning the classification of "POM-BÄR" prior to its referral to the Council.
12. Noting that the number of reservations received by the Secretariat had been increasing after each session of the Committee, the Director requested the Committee to open a dialogue to discuss how this undesirable situation could be avoided. He also asked the Committee to give its views as to the legal status and consequences of the withdrawal of the Swiss reservation on the basis of Article 8, paragraphs 2 and 3 of the HS Convention.
13. Some delegates shared the concern expressed by the Director as to the increasing number of reservations, but it was noted that this question was related to Agenda Item III.4.(b) concerning the binding status of Committee decisions (see Annex C/5 to this Report). Other delegates stressed that it was even more important to implement the decisions of the Committee and, if that was not possible, to inform the Committee that a Contracting Party was not in a position to accept a decision taken by it.
14. In respect of the withdrawal of the Swiss reservation prior to its referral to the Council, many delegates were of the view that the decisions taken by the Committee on the product covered by the aforementioned reservation should be considered as deemed approved by the Council under Article 8.2 of the HS Convention since the reservation had been withdrawn before cognizance by the Council of the situation. They believed that this would expedite the implementation of the Committee's decisions. Unless another Contracting Party had entered a reservation with regard to the matter, there was no need for re-examination by the Committee.

15. Several other delegates, however, pointed out that, according to Article 8.2 of the HS Convention, Committee decisions concerning the Explanatory Notes, Classification Opinions, etc. should be deemed to be approved by the Council only if, not later than the end of the second month following the month during which a session of the Committee was closed, no Contracting Party had entered a reservation. However, if a reservation had been entered with a request that the decision be sent to the Council, the decision could not be deemed to be approved. At this point, the question would have to be submitted to the Council, at which time it either would be approved or would be sent back to the Committee at the request of any Member, even if the Member which entered the reservation decided not to request that it be sent back to the Committee. The Convention did not provide for a procedure by which a decision could be deemed to be approved by the Council if it was not deemed to be approved during the period set out in Article 8. Because the Swiss reservation had been withdrawn after the end of the two-month time limit, informing the Council about both the reservation and its withdrawal would be the appropriate procedure. Then the decision could be approved at the Council sessions.
16. After a lengthy discussion, the Committee decided, by 21 votes to 2, that if a Contracting Party had entered a reservation in respect of a Committee decision referred to in Article 8.2 of the HS Convention, but had subsequently withdrawn it after the two-month time period specified therein, but prior to its referral to the Council, such a decision should be taken as deemed approved by the Council.
17. On the basis of the above decision, the Committee instructed the Secretariat to follow its previous instructions concerning "POM-BÄR" given at its 22nd Session as summarized in Annex H/2 to Doc. 42.750, HSC/22 – Report.

II.4. TECHNICAL ASSISTANCE ACTIVITIES OF THE
NOMENCLATURE AND CLASSIFICATION SUB-DIRECTORATE
(Doc. NC0006E1)

18. The Director informed the Committee that, in April 1999, the Secretariat organized training seminars on the HS in Bolivia (26 participants), Maldives (25 participants), Senegal (30 participants), Syria (48 participants) and Uzbekistan (40 participants).
19. He also informed the Committee that the Secretariat would pursue its technical assistance programme later this year and the next financial year with greater vigor and asked administrations to let the Secretariat know their technical assistance needs.
20. The Observer for Ukraine thanked the Secretariat for organizing an expert mission and a training seminar in his country in December 1998 and March 1999, respectively. He informed the Committee that the Secretariat's assistance had facilitated Ukraine's legislative preparatory work in respect of its accession to the Harmonized System Convention.
21. The Committee took note of the information given in Doc. NC0006E1 and the Annex thereto, as well as the information provided by the Director and the Observer for Ukraine.

II.5 CO-OPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS
(Doc. NC0007E1)

22. The Committee took note of the information provided by the Secretariat concerning co-operation with other international organizations.
23. The representative of The United Nations Environment Programme (UNEP) Ozone Secretariat thanked the Committee for the co-operation extended with regard to the proposed draft Recommendation on Ozone Layer Depleting Substances.
24. While thanking the Secretariat for its continued co-operation, the representative of the UNEP Basel Convention Secretariat explained the importance of working in close relation with Customs Administrations for the effective implementation of the Basel Convention. The representative also proposed joint training activities with the WCO Secretariat.
25. The representative of WTO informed the Committee that its Members, who had introduced HS96 changes in their national tariffs, needed to reflect these changes in their WTO schedules of tariff concessions. These Members had been granted waivers allowing them to carry out the necessary procedures to implement the changes. According to the provisions contained in the General Council Decision of 14 October 1998 extending the limit of those waivers until 30 April 1999, it was envisaged that the Members concerned would submit by that date the complete documentation related to the introduction of the HS96 changes in their WTO schedules, and that in special circumstances a Member could request technical assistance from the Secretariat for the preparation of required documentation. The representative of WTO also stated that there were 37 Members who had received waivers until 30 April 1999 and explained the present position of granting the extension of waivers and the submission of HS96 documentation. With regard to technical assistance, she informed the Committee that the Market Access Division of the WTO continued to extend technical assistance to developing country Members in the preparation of their HS96 documentation and that this Division expected to work closely with the WCO Secretariat in this area. She also explained the proposed Consolidated Loose-Leaf Schedule Project, the objective of which was a database containing the consolidated tariff schedules of all WTO Members.
26. The representative of the Organisation for the Prohibition of Chemical Weapons (OPCW) thanked the Committee for its efforts taken to adopt the draft Recommendation on Chemical Weapons and stated that this Recommendation would help the States Parties to the Chemical Weapon Convention to effectively implement the Convention. He also appreciated the cultivation of several years of contact between the two organizations and stated that it was their firm intention to maintain this co-operation.

II.6. REGIONAL ACTIVITIES WITH REGARD
TO THE HARMONIZED SYSTEM
(Doc. NC0083E1)

27. The Director briefed the Committee in respect of the initiative taken by the members of the WCO's Asia and Pacific Region to establish a Regional Strategic Plan and, in this framework, to hold regular meeting (twice a year) to discuss HS-related matters. He encouraged the Members of other regions to organize similar meetings, since such meetings would provide a common forum to address regional problems and to find common solutions thereto. He also noted that the Secretariat was ready to provide any assistance that might be needed in this regard.

28. The Delegates of Japan and Australia explained that, with a view to promoting accurate and uniform application of the HS among the member administrations in the Region, the meetings had achieved the following :
- (a) to allow administrations in the Region to discuss general and particular matters of concern;
 - (b) to provide an educational forum;
 - (c) to avoid possible classification conflicts in the region;
 - (d) to improve the classification infrastructure of the Regional Members; and
 - (e) to encourage non-Contracting Party administrations to accede to the HS Convention.
29. The Committee congratulated the Members of the Asia and Pacific Region and also encouraged the members of the other WCO Regions to approach HS-related issues in a similar manner.

III. GENERAL QUESTIONS

30. The Committee's conclusions concerning Agenda Item III are reproduced in Annexes C and P/5 to this Report.
31. Under this Agenda Item, the Committee adopted a draft text for a Council Decision concerning a "Procedure for Re-examination of Certain Matters by the Harmonized System Committee". The text adopted is set out in Annex P/5 to this Report.

IV. RECOMMENDATIONS

32. The Committee's conclusions concerning Agenda Item IV are reproduced in Annexes D and P/1 to P/4 to this Report.

V. REPORT OF THE SCIENTIFIC SUB-COMMITTEE (14th Session)

33. The Harmonized System Committee examined the conclusions reached by the Scientific Sub-Committee at its 14th Session.
34. The results of this examination are set out in Annexes E and M/1 to M/5 to this Report.
35. On behalf of the Committee, the Chairman thanked the Scientific Sub-Committee and its Chairman for the excellent work accomplished at the 14th Session of the Scientific Sub-Committee.

VI. REPORT OF THE REVIEW SUB-COMMITTEE (19th Session)

36. The Harmonized System Committee examined the conclusions reached by the Review Sub-Committee at its 19th Session.
37. The results of this examination are set out in Annexes F, N and O to this Report.

38. On behalf of the Committee, the Chairman thanked the Review Sub-Committee and its Chairman for their excellent work accomplished at the 19th Session of the Review Sub-Committee.

VII. REPORT OF THE WORKING PARTY

39. The Harmonized System Committee examined the conclusions reached at the Working Party's presessional meeting. The conclusions of the Committee are reproduced in Annex G to this Report.
40. The texts finalised by the Working Party and adopted by the Committee are set out in Annexes M/13 to M/29 to this Report.
41. On behalf of the Committee, the Chairman congratulated the Chairman and the Members of the Working Party on their excellent work.

VIII. and IX. FURTHER STUDIES AND NEW QUESTIONS

42. The Committee's conclusions concerning Agenda Items VIII and IX are reproduced in Annexes H, IJ, M/6 to M/12 and M/30 to this Report.

X. HS ARTICLE 16 RECOMMENDATION

43. The Committee's conclusions concerning Agenda Item X are reproduced in Annexes K and Q to this Report.

XI. OTHER BUSINESS

44. The Committee's conclusions concerning Agenda Item XI are reproduced in Annexes L and R to this Report.

STAFF CHANGES IN THE NOMENCLATURE AND CLASSIFICATION SUB-DIRECTORATE

Departures :

45. The Director informed the Committee that two excellent Technical Attachés, Mr. K. OMOTO from Japan and Mr. M.H. LEE from Korea (Rep. of) would soon be leaving the Secretariat to return to their Administrations. He noted that they had contributed substantially to the work of the Secretariat, in particular, Mr. Omoto with regard to chemicals and the Customs Laboratory Guide and Mr. Lee with regard to the development of the HS audio-visual training materials. He thanked them for their excellent work and diligence and, in particular, their contributions to the work of the Secretariat and to the Committee.
46. He also informed the Committee that Mr. L. FORNSÄTER, who was the Supervisor in charge of the French speaking officers of the Sub-Directorate, had recently left the Secretariat to return to the Swedish Administration. He thanked Mr. Fornsäter for his outstanding contributions to the work of the Secretariat and the Committee over the past six years and a half.
47. The Committee joined the Chairman in thanking Mr. Fornsäter, Mr. Omoto and Mr. Lee and wished them every success in their new careers.

Arrivals :

48. The Director also informed the Committee that :
- (a) Mr. T. NAGASE, the well known Japanese Delegate to the Committee, had joined the Secretariat in January 1999 as the new Deputy Director;
 - (b) Mr. A. LEITE RIBEIRO, the well known Brazilian Delegate to the Committee, had joined the Secretariat in May 1999 as the new Supervisor; and
 - (c) Mr. N. GOONEWARDENA (Sri Lanka) and Mr. G. VESSAH (Cameroon) had joined the Secretariat as Technical Officers in February 1999.
49. Finally, Mr. Kappler informed the Committee that he himself had joined the Secretariat in January 1999 as the new Director of Tariff and Trade Affairs.

XII. DATES OF THE NEXT SESSIONS

50. The dates of the next meeting of the Review Sub-Committee, the Working Party, the Harmonized System Committee and the Scientific Sub-Committee are as follows :
- (a) Review Sub-Committee (20th Session)
Monday 13 September 1999 (10 a.m.) to
Friday 17 September 1999
 - (b) Working Party
Wednesday 6 October 1999 (10 a.m.) to
Friday 8 October 1999
 - (c) Harmonized System Committee (24th Session)

Monday 11 October 1999 (10 a.m.) to
Friday 22 October 1999
 - (d) Scientific Sub-Committee (15th Session)
Monday 10 January 2000 (10 a.m.) to
Friday 14 January 2000.

J.-L. ROBYR
Chairman

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Annex A to Doc. NC0090E2
(HSC/23/May 99)

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LIST OF CONTRACTING PARTIES
TO THE HARMONIZED SYSTEM CONVENTION

Situation as of 14 May 1999

(96 countries and 1 Customs or Economic Union)

Algeria	Iceland	Pakistan
Argentina	India	Panama
Australia	Indonesia	Peru
Austria	Iran	Poland
Bangladesh	Ireland	Portugal
Belarus	Israel	Romania
Belgium	Italy	Russia (Federation of)
Botswana	Japan	Rwanda
Brazil	Jordan	Saudi Arabia
Bulgaria	Kenya	Senegal
Burkina Faso	Korea (Rep.)	Slovakia
Cameroon	Latvia	Slovenia
Canada	Lebanon	South Africa
Central African Republic	Lesotho	Spain
Chad	Libyan Arab Jamahiriya	Sri Lanka
China	Lithuania	Sudan
Congo (Dem. Rep. of)	Luxembourg	Swaziland
Côte d'Ivoire	Madagascar	Sweden
Croatia	Malawi	Switzerland
Cuba	Malaysia	Thailand
Cyprus	Mali	The Former Yugoslav Republic of Macedonia
Czech Republic	Malta	Togo
Denmark	Mauritius	Tunisia
Estonia	Mexico	Turkey
Ethiopia	Mongolia	Uganda
Fiji	Morocco	United Kingdom
Finland	Myanmar	United States
France	Netherlands	Uzbekistan
Germany	New Zealand	Venezuela
Greece	Niger	Vietnam
Guinea	Nigeria	Zambia
Hungary	Norway	Zimbabwe
		EC

x

x x

LIST OF COUNTRIES, TERRITORIES OR CUSTOMS OR ECONOMIC
UNIONS USING THE HARMONIZED SYSTEM

Situation as of 14 May 1999

(Total 176)

Albania	X	Guyana	X	Saint Kitts and Nevis	X
Algeria	+	Haiti	X	Saint Lucia	X
Antigua & Barbuda	X	Honduras	X	Saint Pierre and Miquelon (French Terr.)	X
Argentina	+	Hong Kong	X	Saint Vincent and the Grenadines	X
Australia	+	Hungary	+	Saudi Arabia	+
Austria	+	Iceland	+	Senegal	+
Azerbaijan	X	India	+	Sierra Leone	X
Bahamas	X	Indonesia	+	Singapore	X
Bahrain	X	Iran	+	Slovakia	+
Bangladesh	+	Ireland	+	Slovenia	+
Barbados	X	Israel	+	Solomon Islands	X
Belarus	+	Italy	+	South Africa	+
Belgium	+	Jamaica	X	Spain	+
Belize	X	Japan	+	Sri Lanka	+
Benin	X	Jordan	+	Sudan	+
Bermuda	X	Kazakhstan	X	Suriname	X
Bolivia	X	Kenya	+	Swaziland	+
Botswana	+	Kiribati	X	Sweden	+
Brazil	+	Korea (Rep.)	+	Switzerland	+
Brunei Darussalam	X	Kuwait	X	Syrian Arab Rep.	X
Bulgaria	+	Latvia	+	Tanzania	X
Burkina Faso	+	Lebanon	+	Thailand	+
Cameroon	+	Lesotho	+	The Former Yugoslav Republic of Macedonia	+
Canada	+	Libyan Arab Jamahiriya	X	Togo	+
Cape Verde	X	Liechtenstein	X	Tonga	X
Central African Rep.	+	Lithuania	+	Trinidad and Tobago	X
Chad	+	Luxembourg	+	Tunisia	+
Chile	X	Macao	X	Turkey	+
China	+	Madagascar	+	Tuvalu	X
Colombia	X	Malawi	+	Uganda	+
Comoros	X	Malaysia	+	Ukraine	X
Congo (Dem. Rep. of)	+	Mali	+	United Arab Emirates	X
Congo (Rep. of)	X	Malta	+	United Kingdom	+
Cook Islands	X	Mauritius	+	United States	+
Costa Rica	X	Mexico	+	Uruguay	X
Côte d'Ivoire	+	Mongolia	+	Uzbekistan	+
Croatia	+	Morocco	+	Vanuatu	X
Cuba	+	Mozambique	X	Venezuela	+
Cyprus	+	Myanmar	+	Viet Nam	+
Czech Republic	+	Namibia	X	Wallis and Futuna (French Terr.)	X
Denmark	+	Netherlands	+	Yemen	X
Djibouti	X	Nepal	X	Zambia	+
Dominica	X	New Caledonia (French Terr.) .	X	Zimbabwe	+
Dominican Rep.	X	New Zealand	+	EC	+
Ecuador	X	Nicaragua	X	Andean Community (CAN)	+X
Egypt	X	Niger	+	Carribean Community (CARICOM)	+X
El Salvador	X	Nigeria	+	Economic and Monetary Community of Central Africa (CEMAC) (former CACEU)	+X
Equatorial Guinea	X	Niue	X	Economic Community of Western African States (ECOWAS)	+X
Estonia	+	Norway	+	Latin American Integration Association (LAIA)	+X
Ethiopia	+	Pakistan	+	Southern Cone Common Market (MERCOSUR)	+X
Fiji	+	Panama	+		
Finland	+	Papua New Guinea	X		
France	+	Paraguay	X		
Gabon	X	Peru	+		
Gambia	X	Philippines	X		
Germany	+	Poland	+		
Ghana	X	Polynesia (French Terr.)	X		
Greece	+	Portugal	+		
Grenada	X	Qatar	X		
Guatemala	X	Romania	+		
Guinea	+	Russia	+		
Guinea Bissau	X	Rwanda	+		

Notes :

- + Acceptance (i.e., Contracting Party to the Harmonized System Convention).
- x Indicates application only.
- +x Some Members are Contracting Parties to the Harmonized System Convention.

x x x

ANNEX C

GENERAL QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
42.397 (HSC/22) NC0008E1	Co-operation with the Technical Committee on Rules of Origin			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee was informed about the developments in the Technical Committee on Rules of Origin (TCRO) (12th to 16th Sessions). The Committee did not agree with the view expressed by some members of the TCRO that the re-packaging of certain goods or the change in use of these goods would entail their re-classification. It agreed that a further study on this subject would not be necessary. In principle, goods were classified as presented to Customs.
2. The Committee took note of other developments in the TCRO concerning various HS-related issues.

x

x x

1	2
NC0009E1	Development of HS audiovisual training materials.

DECISIONS OF THE HARMONIZED SYTEM COMMITTEE (O. Eng.)

1. The Director explained the on-going process of the development of HS audiovisual training materials during the intersession, inter alia, the results of the Drafting Group meeting (15 to 17 February 1999). He drew the attention of the Committee to one of the important aspects of the project, i.e., the estimated costs indicated by the Swedish Administration, set out in para. 8 of Doc. NC0009E1. He also informed the Committee that the Finance Committee in April 1999 agreed to recommend the project to the Policy Commission and the Council (June 1999), i.e., the production of a WCO Training CD-ROM on the HS and its Internet version, based on the Swedish "Harmonizer". He added that, once the project had been finally approved by the Policy Commission and the Council, the Secretariat would undertake the production of the WCO CD-ROM based on the Swedish "Harmonizer" and its Internet version later this year.
2. In response to a question of how to finance the production of the WCO product, the Director stated that it should be financed from the Publications account and all costs should be recouped by sales of the WCO product, as in the case of the HS Explanatory Notes and the HS Commodity Data Base. He further stated that Sweden had agreed to undertake the work of converting the "Harmonizer" to a WCO product on a no profit/no loss basis.
3. On behalf of the Committee, the Chairman expressed thanks to the Swedish Administration for the generous offer of providing its "Harmonizer" to the Secretariat. He further expressed the hope of the Committee that the Policy Commission and the Council in June 1999 would endorse the project of developing interactive HS audiovisual training materials.

x

x x

1	2
NC0010E1	Establishment of a correlation between the Harmonized System and various international Conventions.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee took note of the progress on this matter and agreed to examine it further at its next session.
2. One delegate indicated that the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances should be an instrument included in the correlation listed in Annex I to Doc. NC0010E1.
3. The establishment of a correlation between the HS and various international conventions will be pursued by the Secretariat, taking into account the above indication.

x

x x

1	2	
NC0011E1	Fast-track procedure for HS reservations.	<u>See Annex P/5.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Director emphasized the importance of reaching agreement on the Draft Council Decision concerning the fast-track procedure for HS reservations at the present session of the Committee in order to submit a final Draft to the Council for adoption at its next Sessions in June 1999.
2. The Committee first agreed to replace the term "paragraph 2" by "paragraphs 2 and 3" in the Preamble of the draft text, as proposed by the Secretariat in paragraph 11 of Doc. NC0011E1.
3. As regards the question of whether the matter should be referred to the Council or directly back to the Committee, if a Contracting Party entering a reservation did not indicate which course of action it wished to take (i.e., last part of paragraph 2 (a) of the proposed text), one delegate was of the opinion that, in the light of the purpose of this initiative to establish a fast-track approach for HS reservations, the matter should not be referred automatically to the Council, and he proposed to delete this part.
4. A majority of delegates were, however, of the opinion that the matter should be referred to the Council in the above case, because the proposed fast-track procedure was an exception to the general rule, and, therefore, in the event a Contracting Party entering the reservation did not specify its preference, the normal procedure laid down in the Convention (Article 8.2) should be applied.
5. After discussion, the Committee agreed to the principle that, if a Contracting Party did not specify its preference, the matter should be referred to the Council. In this context, it was agreed that, in order to reflect this principle in the new proposal, the texts in square brackets at the end of paragraphs 2 (a) and (b) of the draft text should be deleted and paragraph 2 (c) should be replaced by the text "if requests relating to the same matter are received from different Contracting Parties for referral under both paragraphs 2 (a) (i) and 2 (a) (ii), or if a Contracting Party does not specify whether the matter should be referred to the Council or directly to the Committee, the matter shall be referred to the Council".
6. Concerning the question as to whether or not paragraph 3 of the proposed text (i.e., the clause regarding the procedures for the withdrawal of a reservation) should be retained, the Delegate of the United States expressed his concern that there was no specific provision in the Convention for allowing a Contracting Party to withdraw its reservation. He added that under the Convention a decision of the Committee could be deemed to be approved by the Council only if no reservation had been entered under Article 8 within the stated two-month period. However, if a reservation was entered with a request that the decision be sent to the Council, the decision could not be deemed to be approved. At this point, the question would have to be sent to the Council, at which time it either would be approved or would be sent back to the Committee at the request of any Member, even if the reserving Member decided

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

not to request that it be sent back to the Committee. He concluded that the Convention did not provide for a procedure by which a decision could be deemed to be approved by the Council, other than the procedure specified in paragraph 2 of Article 8.

7. However, many delegates were in favour of the principle specified in paragraph 3 of the proposed text; namely, that a Contracting Party could withdraw its reservation at any time before the matter was examined by the Council or re-examined by the Committee under the fast-track procedure and, in such cases, the original decision should be deemed to be approved by the Council unless a similar request from another Contracting Party was pending decision. However, if the Council had decided to refer a matter to the Committee, the matter should be re-examined by it. In this context, it was proposed that a new clause should be added stating that a Contracting Party could withdraw its reservation at any time before the matter was examined by the Council in view of the practice which had been already established (e.g., withdrawal of the reservation by Switzerland regarding the classification of "POM-BÄR" as mentioned in Doc. NC0085E1).
8. Finally, the Committee decided, by 19 votes to 2, to retain the clause regarding the procedures for the withdrawal of a reservation in the proposed text with certain modifications, including the idea expressed in paragraph 7 above. In this connection, one delegate pointed out that a procedure regarding the notification of the withdrawal of a reservation to Contracting Parties should also be inserted in the proposed text.
9. In view of the above comments, the Committee agreed to replace paragraph 3 of the proposed text by the following new paragraphs :
 - "3. A Contracting Party to the Harmonized System Convention making a request under paragraph 2 (a) may withdraw its request at any time before the matter is examined by the Council or re-examined by the Harmonized System Committee, as the case may be. However, the Committee will examine the matter if it has received a referral from the Council.
 4. In the event that a Contracting Party withdraws a request pursuant to paragraph 3, the decision by the Harmonized System Committee shall be deemed approved, unless a similar request from another Contracting Party is pending.
 5. The Secretary General shall notify the Contracting Parties of a withdrawal pursuant to paragraph 3."
10. Subject to the modifications mentioned above, the Committee agreed unanimously to adopt the draft Council Decision set out in the Annex to Doc. NC0011E1 and to submit it to the next Sessions of the Council in June 1999.
11. The text adopted are set out in Annex P/5 to this Report.

x

x x

1	2
NC0075E1	Binding status of HSC decisions.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Drawing the attention of the Committee to paragraph 25 of Doc. NC0075E1, the Director explained that this issue was quite important and that a number of questions had to be considered to make progress on this question. He also expressed his concern that once decisions were made binding, the number of reservations might increase as compared with the present situation, which would be contrary to the efforts being made by the Committee to improve its working methods.
2. With regard to a Protocol of Amendment to the Convention making HSC decisions binding, the Chairman raised the question whether a Protocol was really the appropriate instrument to achieve the objective of this issue (i.e., giving binding status to HSC decisions) since the Protocol would be applicable only to its signatories.
3. The Delegate of the EC suggested that transparency with regard to the implementation of HS decisions was very important to world trade and all Contracting Parties who could not accept or implement HSC decisions should officially inform the Committee of their situation. The EC had always complied with HSC decisions in respect of which no reservation had been entered. The least desirable scenario would be where Contracting Parties did not enter reservations, but where they also did not comply with HSC decisions and did not inform the Committee.
4. As regards the questions in paragraph 25 to Doc. NC0075E1, he also expressed the view that, as far as classification questions were concerned, the binding HS decisions should apply only to the specific article before the Committee. Voting procedures and the period for the implementation of HS decisions should be considered in depth at a forthcoming session. The EC could accept the possibility of amending the HS Convention, but felt that a Protocol to the Convention might also be considered as a means of giving a legal basis to this issue, since it would be difficult to obtain unanimity for amending the Convention.
5. The Delegate of New Zealand stated that his Administration published HS decisions when they significantly affected the trade. Therefore, the responses by New Zealand to the Secretariat's questionnaire as set out in Annex II to Doc. NC0075E1 did not necessarily reflect its position. He pointed out that the existing HS Convention did not make HSC decisions binding on Contracting Parties; the question of national sovereignty vis-à-vis HSC decisions should be considered. He also expressed his concerns about how to publish Classification Opinions in case some administrations would not be in a position to implement specific HS decisions. He further stated that this issue should also be considered in terms of the burden of proof with regard to classification for declaration purposes, which rested with importers in New Zealand at present.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. In view of the above, he suggested that a special Working Group should be established in order to make more progress on this issue; for which some delegates expressed support.
7. The Delegate of Japan also pointed out the importance of transparency with regard to the implementation of HS decisions, and indicated that a study with regard to the national procedures of each Contracting Party should be conducted.
8. The Delegate of the United States noted that the HS Convention did not make HSC decisions binding and expressed the view that an amendment to the Convention would be necessary to achieve that end. He pointed out that certain administrations might interpret decisions taken by the Committee in a different manner and in some cases such decisions might be limited to the specific article only, without any extension of the decision to the same class or kind of articles. He also pointed out that differing national legal structures of administrations would make it difficult to implement decisions taken by the Committee. He further pointed out that some HS decisions had been taken in the past without the expression of the rationale behind the decision. In view of the foregoing, he stressed that the problems were significant. Further, he questioned whether there was a widespread problem and stated that he would favour other methods to ensure uniformity.
9. The Director suggested that as New Zealand proposed, a Working Group be established to consider this issue in depth.
10. Finally, the Secretariat was instructed to send a letter to administrations, including a summary of the discussion with regard to this question at this Session, and invite them to consider this issue comprehensively. Administrations should also be invited to participate in the proposed Working Group.

x

x x

1	2
NC0076E1	Improvement of dispute settlement procedures.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Director explained that responses to the Secretariat's survey with regard to this issue had been received only recently and the Secretariat needed more time to study the question. Inviting the attention of the Committee to paragraph 8 of Doc. NC0076E1, he also suggested that this item should be considered in terms of a broad range of options for improving and speeding up the HS classification dispute resolution process.
2. The Delegate of New Zealand was of the view that, judging from the history of dispute settlement under Article 10 of the HS Convention, there did not appear to be a need to create a dispute settlement panel. He also stated that the timing was not right to undertake such a study and the Committee should await the results of its work with regard to the fast-track reservation procedure and the binding status of HS decisions before continuing this study.
3. The Delegate of the EC mentioned that under the current legal framework, creation of a dispute settlement panel might actually render present procedures more cumbersome rather than facilitating them. If the panel were a kind of HS Working Group, the discussions which took place within the panel would inevitably be reopened in the HSC. If a dispute settlement panel were established under the Council, it would prevent the EC, which was not a Council Member, from exercising its right to vote. He also argued that the Council itself had never settled disputes on HS classification matters and always referred them to the Committee for re-examination. He added that it might make more sense to undertake a study aimed at either amending the HS Convention or adopting a Protocol of Amendment to the Convention with a view to establishing the procedure to be followed by a separate dispute settlement panel with its own powers and with its decisions being made binding.
4. The Delegate of Japan expressed the view that this issue was closely related to Items III.4 (a) and III.4 (b) of the Agenda (fast-track reservation procedures and binding HSC decisions, respectively) and should be studied together with these items.
5. The Chairman then invited the Committee to vote on whether or not the study of the improvement of dispute settlement procedures should be pursued. The opinion of the Committee was equally divided in this regard.
6. Consequently, the Director suggested that since this issue was less urgent than the other policy issues under consideration, it should not be actively considered for the time being.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

7. The Committee agreed with the Director's suggestion and decided to await the results of the other two policy issues, i.e., fast-track reservation procedure and binding status of HS decisions, before continuing to study the issue of dispute settlement procedures.

x

x x

1	2
NC0012E1	Simplified tariff treatment of certain goods.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Secretariat's study with regard to the simplified classification treatment of certain goods was intended to facilitate trade by reducing the costs and time connected with the classification of those goods.
2. In this connection, the Secretariat had issued a questionnaire soliciting the experience of administrations with respect to goods traded electronically and/or via courier services – two of the most technologically advanced and fastest growing means of trade in goods.
3. The questionnaire responses were mixed. Based on the information gathered to date, the Secretariat asked the Committee whether it wished to continue with a study leading to proposals for provisions for simplified tariff treatment for certain limited categories of goods in the Harmonized System.
4. The Secretariat sought the Committee's guidance as to:
 - whether to proceed with a study on simplified classification treatment, in general,
 - if so, what direction to pursue, e.g., courier shipments, goods having no commercial value, goods with a low commercial value, etc., and
 - the appropriate vehicle, e.g., a Recommendation, amendment of the HS Convention, etc.
5. In responding to these questions, one delegate, pointing out that the means of transport of goods should not affect their classification in the Harmonized System, indicated that a number of issues related to the question under consideration might be more properly covered within the context of the revision of the Kyoto Convention and suggested that the Secretariat convey the responses to the questionnaire to the Facilitation Sub-Directorate.
6. When invited by the Chairman to vote on the question of whether to proceed with this study, the Committee decided, by 14 votes to 2, not to pursue the study.

x

x x

1	2
NC0013E1	Annual survey to determine the percentage of national revenues represented by Customs duties.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Referring to Doc. NC0013E1, the Director explained that Customs tariffs still remained important from a pure revenue standpoint and expressed his intention to publish a similar survey once a year. Adding that this survey would be introduced in the coming WCO News, he invited the Committee to comment on ways the Secretariat might improve the survey in the future.
2. The Delegate of the EC clarified the fact that the Customs duties collected by the EC Member Customs Administrations constituted resources of the EC and did not belong to individual administrations. Furthermore, he stated that, contrary to what the document implied, there were no internal Customs requirements between the EC Member States. Within the EC, persons, goods, services and capital moved freely.
3. The Delegate of Switzerland noted that the figures regarding Switzerland, reproduced in Annex I to Doc. NC0013E1, were not correct. The Secretariat agreed. The figures should be replaced by the following :

Customs duties (B) : 763 (M. of Francs)
Share of Customs duties (B/A) : 2.35 %
Average Customs Duty Rate (B/C) : 0.84 %.
4. The Committee took note of the developments in this regard.

x

x x

ANNEX D

RECOMMENDATIONS

Working Doc.	Subject	Recommendations
1	2	3
NC0014E1	Review of certain Recommendations adopted by the WCO.	<u>See Annexes P/1, P/2 and P/3.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Chairman reminded the Committee that it had agreed, at its 22nd Session, to provisionally adopt the amendments to the existing Council Recommendations on (i) Standard Units of Quantity, (ii) Chemical Weapons and (iii) Narcotic Drugs, set out in the Annex to the working document.
2. Subject to a minor modification (i.e., deletion of the redundant expression “in terms of the number” from the English text of the 10th paragraph of the Recommendation on Standard Units of Quantity), the Committee adopted all the texts in Parts A, B and C of Doc. NC0014E1.
3. The texts adopted are set out in Annexes P/1, P/2 and P/3 to this Report.
4. The Observer for the Organization for the Prohibition of Chemical Weapons thanked the Committee and the WCO Secretariat for the adoption of the amendments to the Recommendation on Chemical Weapons. He stated his belief that the amendments adopted would be a major step forward in increasing the number of acceptances of the Recommendation on Chemical Weapons by the HS Contracting Parties.

x

x x

1	2	3
NC0015E1 NC0081E1	Draft Recommendation concerning ozone layer depleting substances.	<u>See Annex P/4.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee agreed to amend the two clauses in the provisionally adopted Recommendation, as proposed by the Secretariat in paragraph 11 of Doc. NC0015E1, in order to allow Member Administrations to group together two or more subdivisions.
2. The Committee also agreed to insert, in addition to the subdivisions under subheadings 2903.19 and 2903.45, new subdivisions for the separate identification of certain pure Ozone Layer Depleting Substances (ODS_s) under subheading 2903.49, as proposed in the provisionally adopted Recommendation.
3. The Committee further agreed with the new proposal by the UNEP that a subdivision for "Bromomethane (methyl bromide)" should be inserted under subheading 2903.30, since, according to the UNEP Observer, bromomethane was being used widely and it was very important to monitor its international movement.
4. At the suggestion of the UNEP Observer, the Committee finally agreed to drop all new subdivisions for mixtures containing ODS_s under Chapter 38 from the provisionally agreed Recommendation and to submit a draft Recommendation listing only certain separately identified pure ODS_s to the Council this year. In this regard, it was agreed to re-examine the issue concerning the new subdivisions for mixtures at a later stage on the basis of further information to be submitted by the UNEP. The proposal made by Canada in Doc. NC0081E1 would also be taken up in that context. In this connection, one delegate pointed out that the question concerning mixtures should be examined first by the Scientific Sub-Committee based on detailed information to be submitted by the UNEP.
5. The texts adopted are set out in Annex P/4 to this Report.

x

x x

ANNEX E

REPORT OF THE SCIENTIFIC SUB-COMMITTEE

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
42.850	Report of the 14th Session of the Scientific Sub-Committee.		<u>See Annexes M/1 to M/4.</u>	<u>See Annexes M/1 to M/4.</u>
NC0016E1	Matters for decision by the Harmonized System Committee.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng./fr.)

- The Committee examined the questions arising from the Report of the Scientific Sub-Committee's 14th Session (February 1999). The decisions taken by the Committee are set out below with reference to the corresponding Annexes of the SSC Report (Doc. 42.850).

Annex A/1 - Possible creation of a new heading for biodegradable plastics and articles thereof
- The Committee took note of the fact that this matter was suspended for the time being, and that administrations were invited to take up the study of this matter during the next review cycle, if necessary.

Annex A/2 – Possible amendments to the Nomenclature and the Explanatory Notes to clarify the classification of co-ordination compounds
- The Committee took note of the fact that the Sub-Committee had agreed to study this question further at its next session on the basis of the approach to classify co-ordination compounds by ligand (i.e., the "cleavage approach").

Annexes A/3 and C1 – Classification of certain INN products and pharmaceutical intermediates.
- The Committee approved the classifications agreed upon by the Scientific Sub-Committee concerning (a) the classification of pending items-INN List 78, (b) new items-INN List 79, (c) pending INN items and (d) pharmaceutical intermediates. The Committee also

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

took note that the Sub-Committee would further examine the classifications placed in square brackets.

5. The classification approved and those placed in square brackets are set out in Annex M/1 to this Report.

Annexes A/4 and C/2 – Possible amendment of heading 25.18

6. The Committee adopted the texts proposed by the Scientific Sub-Committee for heading 25.18 and subheadings 2518.10 to 2518.30.
7. The Committee agreed to amend, by corrigendum, the second and third paragraphs of the Explanatory Note to heading 25.18 as proposed.
8. The Committee further agreed to study the amendments to the Explanatory Note to heading 38.16 as recommended by the Scientific Sub-Committee at its next session.
9. The texts adopted are set out in Annex M/2 to this Report.

Annex A/5 – Criteria for distinguishing between medicaments and premixes containing antibiotics

10. The Committee took note of the fact that the Sub-Committee had concluded that no general criteria could be established for distinguishing between medicaments and premixes containing antibiotics.
11. The Secretariat was requested to study this matter further.

Annexes A/6 and C/3 - Proposed amendments to the Nomenclature and the Explanatory Notes concerning polymer names

12. The Committee took note of the fact that the Scientific Sub-Committee's conclusions were forwarded to the Review Sub-Committee's 19th Session (see also Annex F/1 to this Report).

Annexes A/7 and C/4 – Possible legal amendments to Chapter 30 concerning hormone derivatives and analogues.

13. The Committee adopted the proposed legal amendments to Chapter 30 and its Explanatory Note.
14. The texts adopted are set out in Annex M/3 to this Report.

Annex A/8 – Proposal by the EC for amendment of the structure of heading 25.19

15. The Committee took note of the fact that the Scientific Sub-Committee's conclusions on this question were forwarded to the Review Sub-Committee's 19th Session (see also Annex F/1 to this Report).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes A/9 and C/5 - Proposed amendments to certain subheadings in Chapter 29

16. The Committee took note of the fact that the Scientific Sub-Committee's conclusions on this question were forwarded to the Review Sub-Committee's 19th Session (see also Annex F/1 to this Report).

Annex A/10 – Proposed new subheading for “gas condensates” in heading 27.09

17. The Committee took note of the fact that the Scientific Sub-Committee's conclusions on this question were forwarded to the Review Sub-Committee's 19th Session (see also Annex F/1 to this Report).

Annexes A/11 and C/6 – Possible amendments to the texts of subheadings 3920.41 and 3920.42

18. The Committee took note of the fact that the Scientific Sub-Committee's conclusions on this question were forwarded to the Review Sub-Committee's 19th Session (see also Annex F/1 to this Report).

Annex A/12 - Classification of tropical fruit preserved by the addition of sugar and drying

19. The Committee's conclusions concerning this question are set out in Annex E/2 to this Report.

Annex A/13 - Classification of “High fat cream cheese” and possible creation of a definition of cheese of heading 04.06

20. The Committee's conclusions concerning this question are set out in Annex E/3 to this Report.

Annex A/14 - Possible upper limit of cocoa content for products of heading 17.04

21. The Committee agreed to examine this question in the context of Agenda Item VIII.1.

Annexes B/1 and D - Inclusion of chemical structures in the Explanatory Notes to Chapter 29

22. The Committee approved the inclusion of chemical structures in the Explanatory Notes as agreed upon by the Scientific Sub-Committee.

23. The chemical structures adopted are set out in Annex M/4 to this Report.

Annex B/2 – Exchange of information on Customs laboratory matters

24. The Committee took note of the developments in this respect.

x

x x

1	2
NC0026E1	Classification of tropical fruit preserved by the addition of sugar and drying.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Delegate of Thailand reiterated his Administration's view that the fruit in question was to be classified in Chapter 8. In this respect he drew the Committee's attention to an article, distributed during the meeting, from "The Centre of Advanced Studies in Post-Harvest Technology (India)", concluding that osmotic dehydration was a new drying technique used in food preparations.
2. He pointed out that one advantage of osmotic dehydration, since it was a low temperature water removal process, was minimum loss of colour and flavour. It was also stated that enzymatic and oxidative browning were prevented as the fruit pieces were surrounded by sugar, thus making it possible to retain good colour with little or no use of sulphur dioxide. In his opinion, osmotic dehydration was a modern drying process and, since no phase changes were involved, it entailed less energy consumption than freeze drying or tunnel drying. He concluded that osmotic dehydration had to be regarded as a process permitted by Note 3 to Chapter 8, thus enabling classification of the fruit in question in that Chapter.
3. Another delegate supported the Delegate of Thailand and underlined that there was some disagreement in the Scientific Sub-Committee as to whether the osmotic dehydration process was a drying process or not. In his view this process should be considered to be a pre-treatment process before conventional drying.
4. The Delegate of the EC agreed with the Scientific Sub-Committee's conclusion regarding the difficulty of checking the added sugar content to distinguish between fruit of Chapter 8 and of Chapter 20, since this depended on the variety of fruit, where it was grown, the season, etc.. He further stated that Chapter 8 only covered natural fruit (fresh or dried). Fruits which were peeled, cut, blanched and kept in a sugar syrup for a long period of time, thus enabling the sugar of the syrup to diffuse into the fruit and to replace completely the sugar of the fruit, could in his opinion not be classified as fruit of Chapter 8.
5. He also drew the Committee's attention to paragraph 11 of Doc. NC0026E1. The majority of the delegates to the Scientific Sub-Committee were of the opinion that the osmotic dehydration process was basically not a drying process. He, therefore, proposed that the General Explanatory Notes to Chapters 8 and 20 should be amended to reflect this fact. In his mind, this point was more important than the actual classification issue.
6. Some delegates expressed concern as to the fact that samples of the actual fruit had not been compared with samples of the corresponding fresh fruit before they had undergone the osmotic dehydration process. In this respect it was pointed out that such samples were difficult to obtain, and that actual samples had been available during earlier

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

meetings of the Committee. It was, therefore, decided that it was not necessary to carry out further laboratory analysis of the fruit in question.

7. One delegate pointed out that the article distributed during the meeting (see paragraph 1 above) also contained information concerning “added sucrose content” and “sugar gain”, thus indicating the addition of sugar when the osmotic dehydration process was involved.
8. When this question was put to a vote, the Committee first decided, by 15 to 10 votes, that the osmotic dehydration process was a process which was not allowed for products of Chapter 8. Accordingly, the fruit had to be classified in Chapter 20.
9. The Committee agreed unanimously that the fruit in question should be classified in heading 20.08 (pineapples in subheading 2008.20 and papayas in subheading 2008.99).
10. In order to implement these decisions, the Secretariat was instructed to prepare two Classification Opinions to be examined by the next pre-sessional Working Party.
11. The Secretariat was also instructed to prepare draft amendments to the General Explanatory Notes to Chapter 8 and Chapter 20 emphasizing that the osmotic dehydration process (which used sugar syrup as an osmotic agent, with the sugar of the fruit being completely replaced by the sugar of the syrup) was not allowed for products of Chapter 8.

x

x x

1	2
NC0027E1 NC0086E1	Classification of "high fat cream cheese" and possible creation of a definition of cheese of heading 04.06.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Since only one administration (out of ten) had carried out the laboratory tests referred to in Doc. NC0027E1 (paragraphs 26 and 27), it was decided to postpone discussion of this item to the next session of the Committee, when the results of those tests would be available.

x

x x

1	2	4
NC0078E1	Classification of new INN products (WHO List 80).	<u>See Annex M/5.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Concerning the proposed classification of 49 INN products as indicated in bold type in the Annex to Doc. NC0078E1, one delegate expressed his doubt with regard to Volpristin. He stated that this product should be classified in heading 29.41 as an antibiotic rather than in heading 29.34. Except for Volpristin, the Committee agreed with the proposed classifications.
2. It was also agreed that the classification of the remaining 28 INN products (Volpristin and 27 products whose classification had been placed in square brackets in the Annex to Doc. NC0078E1) would be submitted to the next Session of the Scientific Sub-Committee.
3. The list of products and the agreed classifications adopted are set out in Annex M/5 to this Report.

x

x x

ANNEX F

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NR0045E2	Report of the 19th Session of the Harmonized System Review Sub-Committee.	<u>See Annex O/6.</u>	<u>See Annexes O/1 to O/12.</u>	<u>See Annexes N/1 to N/22.</u>
NC0017E1 NC0079E1	Matters for decision by the Harmonized System Committee.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng./Fr.)

1. The Harmonized System Committee examined the questions arising from the Report of the Review Sub-Committee's 19th Session (March 1999).
Annex A/1 – Proposal concerning the separate identification of flat panel displays
2. The Committee took note that the Review Sub-Committee would examine this issue further during the next HS review cycle.
Annex A/2 – Possible separate identification of equipment for the manufacture of semiconductor devices and flat panel displays
3. The Committee took note that the Review Sub-Committee would examine this issue further during the next HS review cycle.
Annexes A/3 and D/12 – Possible amendment to the texts of subheadings 3920.41 and 3920.42
4. The Committee took note that the Scientific Sub-Committee would re-examine the draft text of the new Subheading Explanatory Note to heading 39.20 and the appropriate test methods for distinguishing the products in question.
5. The Committee then unanimously adopted the proposed texts of the amendments to subheadings 3920.41 and 3920.42.
6. The texts adopted are reproduced in Annexes N/1 and O/1 to this Report.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes A/4 and D/20 – Possible subdivision of heading 27.10

7. One delegate felt that the Report of the Review Sub-Committee did not contain the necessary technical information to permit the Committee to decide this question with full knowledge of the facts and proposed to postpone action with regard to this matter to the next review cycle.
8. Most delegates, however, were of the view that this question had been studied for many years and were prepared to decide the question.
9. With regard to the question of analytical methods, by 9 votes to 2, the Committee decided in favour of the ASTM D86 method over the ISO 3405 method; there was no support for the option of using one or the other of the methods.
10. On this basis, the Committee adopted the proposed new subheading Note 4 to Chapter 27 (by 8 votes to 3) and the proposed text of subheading 2710.1, by 9 votes to 4.
11. The Committee directed the Review Sub-Committee to examine, at its next session, the question of a Subheading Explanatory Note relative to waste oils.
12. The texts adopted are reproduced in Annexes N/2 and O/2 to this Report.

Annexes A/5 and D/24 – Possible amendments to Chapter 48 : Proposals by Argentina and the EC

Text of heading 47.05

13. The Committee considered the two alternative texts to amend heading 47.05 with a view to clarifying its scope (i.e., a delegate's proposal to refer to "semi-chemical or chemi-mechanical wood pulp" and the Secretariat's proposal to refer to "wood pulp obtained by a combination of mechanical and chemical pulping processes"). However, the aforementioned delegate indicated that he could also accept the Secretariat's proposal. The Committee decided by 6 votes to 1 in favour of the Secretariat's proposal and adopted unanimously the amendment to heading 47.05.

New Note 1 to Chapter 48

14. When considering the proposal to insert a new Note 1 to Chapter 48 clarifying the scope of the term "paper" for the purposes of Chapter 48, certain delegates felt that corresponding provisions currently included in the General Explanatory Notes to Chapter 48, should be given legal status. Other delegations, however, considered that the present situation vis-à-vis the scope of the term "paper" was sufficiently clear.
15. When called upon by the Chairman, the Committee agreed by 12 votes to 4, to insert a new Note 1 to Chapter 48 and adopted the text as suggested.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Note 4 to Chapter 48

16. There was no support for the Argentine proposals (i) to replace the reference to “mainly” by a quantification, (ii) to increase the brightness criterion and (iii) to exclude multi-ply paper and paperboard from the scope of Note 4 to Chapter 48. The Committee did, however, adopt unanimously the amendments already approved by the Sub-Committee.

Note 7 to Chapter 48

17. Some delegates indicated that the current dimensions for paper in strips or rolls of headings 48.01 and 48.04 to 48.08 should be retained as they reflected present industry practice. Other delegates, however, indicated that technical developments had shown that the dimensions mentioned in current Note 7 (A) (a) would increase from 15 to 36 cm. Consequently, the provisions in Note 7 should be amended in accordance with these developments.
18. By 8 votes to 4, the Committee agreed to increase the dimensions for paper and paperboard in strips or rolls, of headings 48.01 and 48.04 to 48.08 from 15 to 36 cm and adopted unanimously the proposed text.

Subheading Note 3

19. The Committee unanimously adopted the text approved by the Sub-Committee.

New Subheading Note 4

20. When the Committee considered the proposed new Note 4 to Chapter 48 concerning the definition of paper of subheading 4805.12, one delegate indicated that, though this kind of paper was traded in certain parts of the world, exact figures concerning trade volume were not available. He quoted, however, data from a production facility in Spain. Following this explanation, the Committee adopted the proposed subheading 4805.12 (by 8 votes to 2) and the corresponding new Subheading Note 4 to Chapter 48 (unanimously), the French text of subheading 4805.12, however, being changed to read “papier paille pour cannelure”.

New Subheading Note 5

21. The Committee unanimously adopted new Subheading Note 5 to Chapter 48.
Heading 48.02
22. The Committee unanimously adopted the proposed amendments to the heading text and to the structure of the subheadings of heading 48.02, after having agreed on the size dimension to be used for subheadings 4802.56, 4802.62 and 4810.14 (i.e., 435 mm).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Heading 48.05

23. The Committee unanimously adopted the proposed new structure of the subheadings of heading 48.05. It also adopted the amendment to the heading text, following the renumbering of the Notes to Chapter 48.

Heading 48.10

24. The Committee adopted unanimously the proposed amendment to heading 48.10 and to subheadings 4810.1 to 4810.2.

Heading 48.11

25. The Committee adopted unanimously the proposed amendment to heading 48.11.

Heading 48.23

26. The Committee adopted unanimously the proposal to delete subheadings 4823.5 to 4823.59.

Code numbers

27. The Committee adopted unanimously the proposal to renumber certain subheading code numbers in headings 48.10, 48.11 and 48.23, since the scope of the subheadings concerned had been changed as a result from deleting the dimension criteria from headings 48.02, 48.10 and 48.11.

Subheading Explanatory Note 4805.19

28. The Committee adopted unanimously the proposed Subheading Explanatory Note for new subheading 4805.19, the French version being amended to read "le papier pour cannelure *Wellenstoff*" in lieu of "la cannelure *Wellenstoff*".
29. The texts adopted are set out in Annexes N/3 and O/3 to this Report.

Annexes A/6 and D/1 – Draft amendments to the Nomenclature to clarify the classification of recorded media

30. There were two divergent views on this issue. One delegation was in favour of studying the issue in more detail during the next review cycle. Industry was moving away from classification based on the content of the media. If the Committee tried to create subheadings on the basis of content, it would run the risk of having to define the differences between video, software and music which were merging in the industry.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

31. Most other delegations, however, favoured adopting the proposed amendments. The status quo was not acceptable. The Committee should opt to make improvements now to the Nomenclature and to continue to do so in the next review cycle. The trade and administrations needed the amendments that had been proposed by the Review Sub-Committee.
32. The Committee, by 25 votes to 1, agreed not to maintain the status quo. The Committee, by 17 votes to 1, agreed to retain subheading 8524.34 for digital video discs, as proposed in Annex D/1 to Doc. NR0045B2. The Committee, by 8 votes to 3, further agreed to retain the word "digital" in subheadings 8524.33 and 8524.34.
33. The Committee, by 13 votes to 1, adopted the amendments for subheadings 8524.3 to 8524.40 and 8524.9 proposed by the Review Sub-Committee.
34. The Committee unanimously adopted the proposed amendment to Item 9 of the Explanatory Note to heading 85.24.
35. The Committee instructed the Secretariat to draft a Subheading Explanatory Note regarding digital video discs (subheading 8524.34), to be examined at the next session of the Review Sub-Committee.
36. The texts adopted by the Committee are set out in Annexes N/22 and O/12 to this Report.
Annexes A/7 and D/2 – Proposal by the Canadian Administration for amendments to the Nomenclature concerning canola seeds, canola oil and canola meal
37. The Committee unanimously adopted the proposed texts.
38. The texts adopted by the Committee are set out in Annex N/4 to this Report.
Annexes A/8 and D/3 – Possible amendments to the Nomenclature and the Explanatory Notes to facilitate CITES controls
39. The Committee accepted the new proposal by the Secretariat for the text of Note 1 (a) to Chapter 3.
40. The texts adopted by the Committee are set out in Annex N/5 to this Report.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes A/9 and D/21 – Possible amendments to the Nomenclature to clarify the classification of certain nutritional preparations and related products

41. Several delegates spoke in favour of the proposed changes. They believed that the changes would be better than the status quo and would simplify the Nomenclature. Other delegates believed that the proposed changes would not simplify the Nomenclature and that there would be a significant transfer of products. In addition, the proposed definitions were not clear and this would be a source of new difficulties. They wanted the status quo.
42. When asked which delegations supported the amendments set out in Annex D/21, the Committee split 9 votes to 9. As a consequence, the proposed amendments were not adopted.

Annexes A/10 and D/4 – Possible amendments to the Nomenclature to clarify the scope of the expression "orthopaedic appliances" in heading 90.21

43. One delegate asked for clarification of the expressions "mass produced", "singly and not in pairs" and "designed to fit either foot equally" in the proposed amendment. It was explained that the expressions meant "not custom made", "not sold as a set" and "designed to fit both the right and left foot", respectively. Another delegate asked for the deletion of the phrase "and not in pairs" but the phrase was retained by a vote of 16 to 1. The Committee unanimously adopted the new Note 6 defining "orthopaedic appliances".
44. The text adopted by the Committee is set out in Annex N/6 to this Report.

Annexes A/11 and D/5 – Possible amendments to the Nomenclature concerning narcotic drugs, psychotropic substances and their precursors controlled by UN Conventions

45. After adding the phrase "in the structure" after the word "containing" in the one dash subheading 2933.4, the Committee unanimously adopted the text concerning possible amendments to the Nomenclature concerning narcotic drugs, psychotropic substances and their precursors controlled by UN Conventions.
46. The texts adopted by the Committee are set out in Annexes N/7 and O/4 to this Report.

Annexes A/12 and D/23 – Possible amendments to heading 38.22 to clarify the classification of CRMs

47. One delegate argued against introducing a "criterion of primary use" in the proposed definition of CRMs, as this would jeopardize the grouping of all CRMs in one subheading. After some discussion, the Committee decided to delete this text, which had been placed in square brackets in new Note 2 (A). By 7 votes to 1, the Committee decided to substitute the US proposed text "and which are suitable for analytical, calibrating or referencing purposes" at the end of new Note 2 (A), in lieu of the deleted bracketed text.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

48. By 7 votes to 1, it was decided to retain the words in square brackets in new Note 2 (B) which read “the products of Chapter 28 or 29” and by 6 votes to 2, to delete the text which read “and instruments of Chapter 90”. The proposed amendment of heading 38.22 was adopted without change.

Explanatory Notes

49. Referring to page D/23/3, Item 4, one delegate argued for retaining the text describing the certifying authorities or, at the very least, retaining the reference to “certifying authority”. By 14 votes to 2, the last sentence of the proposed text within square brackets was deleted but the phrase “and the certifying authority” was retained.
50. The Committee unanimously adopted the legal text and Explanatory Note amendments proposed by the Review Sub-Committee.
51. The texts adopted by the Committee are set out in Annexes N/20 and O/10 to this Report.

Annexes A/13 and D/16 – Possible amendments to the Nomenclature and the Explanatory Notes concerning belts and belting

52. The Committee unanimously agreed to add a reference to "belting" in the English version of Note 1 (e) to Section XVI with a view to aligning the English and French texts.
53. The texts adopted by the Committee are set out in Annex N/8 to this Report.

Annex A/14 – Proposal by the EC for amendment of the structure of heading 25.19

54. The Committee agreed that no changes should be recommended to the structured nomenclature to heading 25.19 in view of the lack of internationally agreed distinguishing criteria for the products in question.

Annexes A/15 and D/6 – Proposed amendments to certain subheadings in Chapter 29

55. The Committee unanimously adopted the proposed new subheading texts.
56. The texts adopted by the Committee are set out in Annexes N/9 and O/5 to this Report.

Annex A/16 – Proposed new subheading for "gas condensates" in heading 27.09

57. The Committee took note that the Saudi Arabian Administration had submitted a technical document to the Secretariat for use in the future study of this issue.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

58. The Chairman indicated that the question of the classification of gas condensates would be considered at the next session of the Committee and that the possible amendment of the Nomenclature with respect to gas condensates would be left to the next review cycle.

Annexes A/17 and D/22 – Proposal by China for amendments to the Nomenclature concerning "mushrooms"

59. The Committee decided to renumber the proposed subheadings 0709.53 and 0709.54, as 0709.51 and 0709.52, respectively, for the sake of presentation. The subheading "Other" remained unchanged. Regarding subheadings 2003.10 and 2003.20, the Committee decided, for presentation purposes, to make "Mushrooms of the genus *Agaricus*" the first subheading (2003.10) and truffles the second (2003.20). The subheading "Other" remained unchanged.
60. One delegate focused the Committee's attention on the fact that there was a misalignment in the scope of the word "mushrooms", as defined in French and English reference works. In French, "wood ears" and "jelly fungi" were considered to be "mushrooms", while in English, they were not.
61. The Committee resolved this difference by separately listing "wood ears" and "jelly fungi" along with "mushrooms" in subheading 0712.3. The Committee, by 12 votes to 5, adopted the text of the one-dash breakout for subheading 0712.3, as proposed by the Review Sub-Committee in square brackets. The Committee unanimously adopted the text which had been proposed by the Review Sub-Committee to amend the structured nomenclature of subheadings 0709.5, 0711.5 and heading 20.03.
62. The Director proposed to add references to "wood ears" and "jelly fungi" in the texts of subheadings 0709.5, 0711.5 and heading 20.03, for the sake of uniformity and clarity. The Committee, by 13 votes to 7, decided not to adopt this proposal.
63. The texts adopted by the Committee are set out in Annex N/10 to this Report.
Annexes A/18 and D/13 – Proposed amendments to the Nomenclature and to the Explanatory Notes concerning polymer names
64. The Committee discussed the references in the French text to "polyéthylène-glycols" and, specifically, whether the name should be in the singular and without the dash. The Committee decided to maintain the "s" but to delete the "-" and have two words.
65. The Committee unanimously adopted the proposed amendments concerning polymer names.
66. The texts adopted by the Committee are set out in Annexes N/11 and O/6 to this Report.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes A/19 and D/7 - Possible amendments to Chapter 44

67. The Committee unanimously adopted the proposed new Subheading Note text.
68. The text adopted by the Committee is set out in Annex N/12 to this Report.

Annexes A/20 and D/18 – Possible amendments to Chapter 41

69. With regard to New Note 2 (B) defining the term “crust”, several delegates indicated support for the proposed text. However, one delegate expressed doubts whether Customs officials would be able to tell the difference between leather that has been “coloured” before or after drying.
70. By 15 votes to 1, new Note 2 (B) was adopted.
71. The Committee, after receiving information from the French Administration, decided to retain, in the French version put forward by the Review Sub-Committee, the word “dessèchement” in the proposed text of heading 41.07, etc., as it related to “crusting” in the English text and not to use the phrase “mise en croûte”.
72. The Committee agreed to retain the term “composition leather” and all references in square brackets referring to “[bonded (composition)]” leather were deleted. One delegate asked that when the Explanatory Notes were revised with regard to Chapter 41, that a reference be included to the effect that the terms “bonded” and “composition” were synonymous. The Committee took note of this request.
73. The texts adopted by the Committee are set out in Annex N/13 to this Report.

Annex A/21 – Possible amendment to subheading 8480.41

74. The Committee agreed with the Review Sub-Committee to maintain the status quo and not amend subheading 8480.41.

Annexes A/22 and D/8 – Possible amendments to heading 42.02

75. The amendments to the text of heading 42.02, as well as the new 8th paragraph of the Explanatory Note to heading 42.02, were unanimously adopted. The new texts involved no change in scope.
76. There was no support for the US proposed text for exclusion (a) to the Explanatory Note to heading 42.02 and, as a result, the Committee adopted the Secretariat’s proposal.
77. The texts adopted by the Committee are set out in Annexes N/14 and O/7 to this Report.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes A/23 and D/26 – Possible amendments to heading 90.09

78. This matter was dealt with under a separate Agenda Item (VI.3) for this session of the Committee.

Annexes A/24 and D/14 – Amendment to the Nomenclature in order to group all bitter limes in the same subheading

79. Several delegates believed that the use of scientific names for bitter limes was a source of confusion. There was some concern that, depending on the scientific reference material consulted, there was or was not a species "citrus latifolia". However, other delegates expressed doubts as to whether the expression "bitter limes" by itself was precise enough for classification purposes. The term "bitter" was, after all, subjective
80. One delegate made a proposal from the floor to maintain the status quo but to introduce a new Explanatory note that would clarify the meaning of the term "citrus latifolia". There was no support for this proposal.
81. The Committee, by 11 votes to 10, finally accepted the text "limes (*Citrus aurantifolia*, *Citrus latifolia*)".
82. By 17 votes to 1, the Committee adopted the proposal to amend the Nomenclature to group limes (*Citrus aurantifolia*, *Citrus latifolia*) in a single subheading.
83. The texts adopted by the Committee are set out in Annexes N/21 and O/11 to this Report.

Annexes A/25 and D/10 – Possible amendments to Note 3 (a) to Chapter 85 and to the text of subheading 8509.10

84. The proposed amendments to Note 3 (a) and subheading 8509.10 were unanimously adopted.
85. The texts adopted by the Committee are set out in Annex N/15 to this Report.

Annexes B/1 and D/9 – Possible amendments to the Nomenclature to delete references to "heading No." and "subheading No." in the English text and to substitute "heading" or "subheading" as appropriate

86. After an explanation by the Director of the rationale for this change, the Committee unanimously adopted the proposal.
87. The texts adopted by the Committee are set out in Annexes N/16 and O/8 to this Report.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes B/2 and D/15 – Proposal by the EC for the simplification of heading 85.42

88. This matter is dealt with under a separate Agenda Item (VI.4) for this session of the Committee.

Annexes B/3 and D/17 – Alignment of the French version of heading 58.01 on the English version

89. The Committee unanimously adopted the proposal.

90. The text adopted by the Committee is set out in Annex N/17 to this Report.

Annex B/4 – Proposal by China for creating a new heading in Chapter 85 to provide for Internet delivered software

91. The Committee agreed that the Secretariat should be attentive to the ongoing discussions in other organizations with regard to this issue and be prepared to respond appropriately. At this time, however, the Committee believed it was premature for the Secretariat to undertake a study.

Annexes B/5 and D/19 – Proposal by the EC for the simplification of heading 70.10

92. The Committee unanimously adopted the proposal to delete the two-dash subheadings of subheading 7010.9.

93. The texts adopted by the Committee are set out in Annexes N/18 and O/9 to this Report.

Annexes C/1 and D/11 – Harmonized System Review on the basis of trade statistics

94. The Committee unanimously approved the deletion of the low-trade-volume codes as proposed by the Review Sub-Committee.

95. The texts adopted by the Committee are set out in Annex N/19 to this Report.

Annexes C/2 and D/25 – Possible separate identification of artisanal products : Request from the International Trade Centre (ITC)

96. The Chairman indicated in his summary that there was strong moral support to do something with regard to artisanal products.

97. The ITC thanked the Committee for the opportunity to present this proposal and stressed the importance of these products for developing countries. The representative of the ITC indicated that many letters of support had been received for the proposal from administrations and craft organizations.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

98. Many delegates stressed the importance of artisanal products in the economies of their countries and reiterated their support for the proposed amendments.
99. However, several delegates mentioned some of the problems with the proposed amendments. These included definitions of terms such as “craftsman” and how to determine if a product was made “entirely by hand”.
100. The Director indicated that perhaps the Committee should look to a Council Recommendation. This would give the Committee more time to look into further proposals while, at the same time, providing administrations with flexibility and the ITC with the necessary statistics on the goods in question.
101. There was substantial support for a Council Recommendation. The Committee decided at this time to follow this option and to set aside the Article XVI amendment. The Secretariat was instructed to work on a new Council Recommendation concerning artisanal products, inviting members to work towards the recognition of these products in their statistical nomenclatures.

x

x x

1	2
NC0072E1	Possible amendment to subheading 9009.12.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Several delegates supported the Brazilian proposal submitted in September 1998 to amend heading 90.09 to provide for multifunctional photo-copying apparatus in the structured nomenclature of that heading. The present and future importance of these apparatus in world trade was stressed. Delegates were told that the future amendment and the present classification of these goods were separate issues and, as a consequence, should not be linked. In addition, it was stated that such an amendment would eliminate the need for using various GIRs and legal notes, as the goods would be classified according to GIR 1. Finally, the point was made that such a change did not change the scope of heading 90.09, as these goods were still photo-copying apparatus.
2. Several other delegates spoke out against the proposal. The Committee's attention was drawn to the fact that the Review Sub-Committee was not able to undertake a discussion on the technical and classification issues. A full discussion with all the facts was needed. One delegate said that many of these apparatus were merely printers with enhancements and should be classified in heading 84.71. He felt that it was premature to propose an amendment without first consulting industry and doing a study of the different types of apparatus in question. Finally, with regard to the new Note to Chapter 90 proposed by the Brazilian Administration, there was some concern expressed by these delegates that there could be a transfer of goods from other Chapters to Chapter 90.
3. The ICC representative intervened to indicate that the ICC Customs and Trade Facilitation Committee supported the Secretariat's view that a further study was needed to determine whether these digital apparatus function as photo-copying apparatus. Information gathered by the ICC indicated that these apparatus function overwhelmingly as printers.
4. Several delegates shared the view expressed by Brazil to the effect that the proposed amendment would not entail a transfer of products, because it was intended to clarify the present position while maintaining the status quo.
5. By 9 votes to 7, the Committee decided not to amend the present Nomenclature.

x

x x

1	2	4	5
NC0073E1	Proposal by the EC for the simplification of heading 85.42.	<u>See Annex O/13.</u>	<u>See Annex N/23.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Delegate of the EC explained that this proposal was made to clarify and simplify the Nomenclature. However, several delegates believed that more information was required before the Committee would be in a position to take a decision on the proposal in the Annex to Doc. NC0073E1. Concern was expressed as to the exact nature of the "smart cards". Some delegates believed that this proposal was not a simple change. There would be a transfer of products to subheading 8542.10 and this change was reflected in the renumbering of the subheadings.
2. In addition, several delegates argued that the term "microassembly" should be deleted from the Subheading Note proposed by the Secretariat to clarify the scope of the expression "smart cards". The Committee accepted the proposal not to refer to "monolithic, hybrid or microassembly" in new Subheading Note 2 and then unanimously adopted the revised text of that Note. It was also suggested that the Explanatory Notes could be amended to further clarify the scope of "smart cards".
3. The Committee unanimously adopted the EC proposal for amending the structured nomenclature of heading 85.42 and the new Subheading Note 2 to Chapter 85 as proposed by the Secretariat and modified by the Committee.
4. The texts adopted by the Committee are set out in Annexes N/23 and O/13 to this Report.

x

x x

ANNEX G

REPORT OF THE PRESESSIONAL WORKING PARTY

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0018E1 NC0082B2/A/I	Amendments to the Compendium of Classification Opinions arising from the classification of sugar confectionery containing minute quantities of cocoa.	<u>See Annex M/13.</u>		

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/13 to this Report.

x

x x

1	2	3
NC0019E1 NC0082B2/A/II	Amendments to the Compendium of Classification Opinions arising from the classification of a potato starch product.	<u>See Annex M/14.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the presessional Working Party.
2. The texts adopted are set out in Annex M/14 to this Report.

x
x x

1	2	3
NC0020E1 NC0082B2/ A/III	Amendments to the Compendium of Classification Opinion arising from the classification of "Peppies" snack foods.	<u>See Annex M/15.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Agreeing on the classification of "Peppies" in subheading 1905.90, the Committee decided to delete the square brackets with regard to the subheading references.
2. Subject to a further editorial amendment in the French version of the proposed Classification Opinion, the Committee adopted the text finalized by the Working Party.
3. The texts adopted are set out in Annex M/15 to this Report.

x

x x

1	2	3
NC0021E1 NC0082B2/A/IV	Amendments to the Compendium of Classification Opinions arising from the classification of "Mint sauce".	<u>See Annex M/16.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. In response to the observations of the Working Party in Annex A/IV to Doc. NC0082B2, one delegate stated that, because the chopped mint leaves were clearly visible, the descriptive term "visible" was appropriate.
2. The Committee, however, decided, by 19 votes to 4, that the word "visible" should not be used in the Classification Opinion in the phrase "containing a substantial visible amount of finely chopped mint leaves".
3. Following a suggestion by one delegate, the Committee also decided to use the expression "Mint sauce" (instead of "Mint-based sauce") in the Classification Opinion.
4. Subject to the foregoing, the Committee adopted the texts finalized by the Working Party.
5. The texts adopted are set out in Annex M/16 to this Report.

x

x x

1	2	3
NC0022E1 NC0082B2/A/V	Amendments to the Compendium of Classification Opinions arising from the classification of a sugar/milk/dextrin preparation.	<u>See Annex M/17.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/17 to this Report.

x

x x

1	2	3	4
NC0023E1 NC0082B2/A/VI	Amendments to the Compendium of Classification Opinions and Explanatory Notes arising from the classification of certain transdermal administration systems.	<u>See Annex M/18.</u>	<u>See Annex M/18.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the Working Party.
2. Taking note of the changes made in the French text of Classification Opinion 3004.39/1 by the Working Party, the Committee agreed to similarly amend the text of Classification Opinion 3824.90/9, which already existed in the Compendium of Classification Opinions (page13a).
3. The texts adopted are set out in Annex M/18 to this Report.

x

x x

1	2	3	4
NC0024E1 NC0082B2/ A/VII	Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of products called "Bio-Add".	<u>See Annex M/19.</u>	<u>See Annex M/19.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. After a brief discussion, the Committee decided that administrations having a problem with classification at subheading level or having a problem with the proposed Explanatory Note concerning disinfectants, should submit in their comments for consideration at the next session of the Committee. It was therefore decided not to postpone consideration of this issue to the next session of the Committee.
2. The Committee adopted the text of the proposed Classification Opinion, subject to replacing the word "contaminants" with "micro-organisms".
3. The Committee further decided that new exclusion (ij) to the Explanatory Note to heading 23.09 should be based on the Secretariat text. Subject to replacing the word "contaminants" with "micro-organisms", the Committee also adopted the proposed amendments to the Explanatory Notes to headings 23.09 and 38.08.
4. Subject to the foregoing, the Committee approved the texts finalized by the Working Party.
5. The texts adopted are set out in Annex M/19 to this Report.

x

x x

1	2	3
NC0025E1 NC0082B2/A/VIII	Amendments to the Compendium of Classification Opinions arising from the classification of the "Children's Bible Book (Look, Listen, Read)".	<u>See Annex M/20.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/20 to this Report.

x

x x

1	2	3
NC0028E1 NC0082B2/A/IX	Amendments to the Compendium of Classification Opinions arising from the classification of the "WAP SQ 450/460".	<u>See Annex M/21.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee approved, without modification, the texts finalized by the presessional Working Party.
2. The texts adopted are set out in Annex M/21 to this Report

x

x x

1	2	3
NC0029E1 NC0082B2/ A/X	Amendments to the Compendium of Classification Opinions arising from the classification of a type of cooker for domestic purposes.	<u>See Annex M/22.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee approved, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/22 to this Report.

x

x x

1	2	3
NC0030E1	Classification Opinion arising from the classification of the "Tomcat" apparatus.	<u>See Annex M/23.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee approved, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/23 to this Report.

x

x

x

1	2	3
NC0031E1 NC0082B2/ A/XII	Amendments to the Compendium of Classification Opinions arising from the classification of computer data and video projectors or monitors.	<u>See Annex M/24.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. With respect to proposed Classification Opinions 8471.60/1 and 8528.30/1 (“Telex P170” and “Telex P170v”), one delegate mentioned that since pixels were determined by multiplying the number of rows by columns, the expression “a matrix of 921,600 pixels arranged in 480 rows and 640 columns” was not appropriate. For colour displays, pixels were comprised of three sub-pixels - - one for each of the three primary colours (red, green and blue). Consequently, the Committee agreed to amend the proposed texts to reflect this fact.
2. Concerning proposed Classification Opinion 8528.30/2 (“Sony VPH-1292Q/QM”), it was pointed out that, given the description of the product, it had the higher resolution needed for the highest frequency computer graphic images. On the other hand, concern was expressed that the expression “Graphics projector”, which was not aligned with the heading text “video projector”, might result in unnecessary confusion, and therefore it was proposed that the expression “projector used in the graphics industry” be utilized instead.
3. In this connection, one delegate indicated that this expression would create a different problem since the Committee had decided it could not agree on a principal function for the product and had classified the product on the basis of GIR 3 (c). However, the Committee finally agreed with the proposal and adopted the texts finalized by the Working Party, subject to the above modifications.
4. The texts adopted are set out in Annex M/24 to this Report.

x

x x

1	2	3
NC0032E1 NC0082B2/A/XIII	Amendments to the Compendium of Classification Opinions arising from the classification of the "Kodiak YFM 400 FW" ATV.	<u>See Annex M/25.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the preessional Working Party.
2. The texts adopted are set out in Annex M/25 to this Report.

x

x x

1	2	3
NC0033E1 NC0082B2/A/XIV	Amendments to the Compendium of Classification Opinions arising from the classification of the "Maxi Pampa" and "Chevrolet LUV 2300" vehicles.	<u>See Annex M/26.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the presessional Working Party.
2. The texts adopted are set out in Annex M/26 to this Report.

x
x x

1	2	3
NC0034E1 NC0082B2/A/XV	Classification Opinion arising from the classification of a certain "pick-up" vehicle.	<u>See Annex M/27.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Taking into account the fact that "cargo capacity" was an important element in classifying the vehicle under consideration in heading 87.04 (subheading 8704.21), the Committee agreed to add the phrase "with a cargo capacity estimated at approximately 350 kg" at the end of the second paragraph of the text finalized by the presessional Working Party.
2. The texts adopted are set out in Annex M/27 to this Report.

x

x x

1	2	3
NC0036E1 NC0082B2/ A/XVI	Amendments to the Compendium of Classification Opinions arising from the classification of the "Smart 342".	<u>See Annex M/28.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee approved, without modification, the texts finalized by the Working Party.
2. The texts adopted by the Committee are set out in Annex M/28 to this Report.

x

x x

1	2	3
NC0037E1 NC0082B2/ A/XVII	Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of toilet sets.	<u>See Annex M/29.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee adopted the texts finalized by the Working Party, subject to aligning the English version of the fifth indent on the corresponding French by substituting the expression “for protection from light” for “to rest the eyes”.
2. The texts adopted are set out in Annex M/29 to this Report.

x

x x

ANNEX H

FURTHER STUDIES

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0039E1	Possible amendment to the Explanatory Note to heading 17.04 concerning "detectable" cocoa content.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. One delegate was of the opinion that amending the Explanatory Note to heading 17.04 by inserting a threshold of 0.2 % cocoa (on a totally defatted basis), agreed upon by the Scientific Sub-Committee at its 14th Session, would establish the necessary demarcation line between heading 17.04 and heading 18.06.
2. Other delegates, however, were of the opinion that adjusting the Explanatory Notes would not be enough since the wording of heading 17.04 clearly indicated that sugar confectionery containing cocoa was excluded from that heading. In this respect it was stated that inserting a specific limit only in the Explanatory Notes would create a difficult legal situation (in view of Note 1 to Chapter 17) for these products which were "sensitive" products and important in world trade.
3. The Secretariat was, therefore, instructed to issue a new document for the next session. This document should include a study concerning the potential transfer of goods resulting from the possible amendment of the legal texts. Furthermore, in order to study the trade implications, Contracting Parties should get in contact with their industry and report their findings to the Secretariat for inclusion in the new document.

x

x x

1	2
NC0040E1	Definition of food preparations.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee, unanimously, agreed to retain the status quo with respect to the subject of the coverage of the expression "food preparations", meaning that a case-by-case approach should continue to be used in classifying these products. It was, therefore, decided not to continue the study concerning the definition of the expression "food preparations".
2. One delegate indicated that his Administration would continue its study of this matter and provide the results of this study to the Secretariat in due course.

x

x x

1	2
NC0043E1	Classification Opinion concerning a specific "Veegum" product.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x

x x

1	2
NC0044E1	Possible amendments to the Nomenclature to clarify the classification of certain vitamin-based preparations.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Referring to Doc. NC0044E1, the Delegate of Switzerland stated that the revised proposal under consideration was intended to clarify the classification of vitamins which were stabilized, coated or adsorbed. Classification of those products outside heading 29.36 would empty that heading of a very substantial part of its content. He pointed out that the new text did not entail any transfer to that heading and, moreover, the Swiss proposal reflected classification decisions previously taken by the HSC.
2. It was, however, pointed out by other delegates that even the revised Swiss proposal would expand the scope of heading 29.36 and disrupt the structure of Chapter 29. The structure of Chapter 29 should be maintained.
3. After discussion, the Committee agreed to the EC proposal, by eleven votes to one, that the issue should be studied further during the next review cycle.

x

x x

1	2	3	4
NC0045E1	Proposed new subheadings 4011.21 and 4011.22.	<u>See Annex M/6.</u>	<u>See Annex M/6.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. One delegate took the view that the reference to the load index of tyres in proposed new subheadings 4011.21 and 4011.22 should be retained, stating that the square brackets around the subheadings were retained at the last session in order to obtain the views of other administrations regarding the actual use of ISO standards with regard to the marking of load index on tyres.
2. Certain other delegates, however, stated that in their countries the marking of load index on tyres was not a legal requirement and therefore the manufacturers in these countries were reluctant to accept this proposal at this stage.
3. After discussion, the Committee agreed, by nine votes to one, not to adopt the proposed legal amendments to subheadings 4011.21 and 4011.22. As a consequence, the proposed new Subheading Explanatory Note covering these subheadings, which was set out in square brackets in the Annex to Doc. NC0045E1, was also dropped.
4. The texts provisionally adopted by the Harmonized System Committee at its 20th and 22nd Sessions concerning subheading 4011.30 and the proposed new subheadings 4011.61 to 4011.69 and 4011.92 to 4011.99 and the Explanatory Notes to the proposed subheadings 4011.62, 4011.63, 4011.93 and 4011.94, as well as the Subheading Explanatory Note to subheadings 4012.11, 4012.12, 4012.13, 4012.19 and 4012.20 were finally adopted.
5. The texts adopted are reproduced in Annex M/6 to this Report.

x

x x

1	2	4	5
NC0046E1	Amendments to the Nomenclature to clarify the scope of heading 44.09.	<u>See Annex M/7.</u>	<u>See Annex M/7.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee unanimously accepted the proposed amendments to heading 44.09 and to the relevant parts of the Explanatory Notes.
2. The texts adopted are set out in Annex M/7 to this Report.

x

x x

1	2	4	5
NC0047E1	Possible amendments to subheadings 5102.10, 5105.30 and 6110.10.	<u>See Annex M/8.</u>	<u>See Annex M/8.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Delegate of the United States informed the Committee that his Administration could accept the Mongolian proposal aimed at covering products of "Kashmir goats" and withdrew the alternative proposal for "Wholly of Kashmir goats" that it had put forward.
2. Since several delegates had pointed out that the terminology "Kashmir goats" used in the English text might be interpreted too restrictively, the Committee decided to add the term "(cashmere)" after "Kashmir". The French text was not amended.
3. The Committee unanimously adopted the draft amendments to subheadings 5102.10, 5105.30 and 6110.10, taking the above considerations into account.
4. The texts adopted by the Committee are set out in Annex M/8 to this Report.

x

x x

1	2
NC0048E1	Classification of imagesetters and ink-jet printers and study of the Explanatory Note to heading 84.42.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x
x x

1	2
42.448 42.508 (HSC/22)	Possible amendment of the Explanatory Note to heading 84.71.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

The Committee decided to postpone this item until its next session, in October 1999.

x

x x

1	2
NC0049E1	Classification of repeaters used in LAN systems or in the telephone line system.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

The Committee agreed to postpone this item until its next session in October 1999.

x
x x

1	2
NC0050E1	Classification of the multimedia upgrade kits "I See U Plus".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

The Director explained that this was a question that the Secretariat had put on the Agenda. The manufacturer was no longer in business and, consequently, the Secretariat was not in a position to obtain the necessary information in order for the Committee to make an informed decision. Given this situation, the Director indicated that the Secretariat would have no objection to the question being dropped from the Committee's Agenda. The Committee agreed with this proposal.

x
x x

1	2
NC0051E1 NC0087E1	Classification of the "Color QuickCam".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x
x x

1	2
NC0052E1 NC0074E1	Classification of a video card, sound card and software therefor.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x
x x

1	2	5
NC0053E1	Amendment of Note 6 to Chapter 85.	<u>See Annex M/9.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Firstly, the Committee noted that this issue was aimed at determining the conditions for applying Note 6 to Chapter 85 in the future. Two draft texts were under consideration. The first text would modify the current legal Note. In accordance with that text, media of headings 85.23 and 85.24 remained classified in those headings when presented with a machine for which it was intended. The text, as proposed, did not apply to such media when presented with goods other than a machine for which it was intended. The second text, as proposed by Brazil, would require the separate classification of the media at issue in every case.
2. Opening the discussion, one delegate pointed out that since the media of heading 85.23 or 85.24 were classified separately even when presented with the apparatus for which they were intended, it would make sense to retain this principle when they were presented with other articles.
3. Another delegate recalled that the principle of retaining separate classification of the media had been justified, during previous discussions, by the need for international trade statistics in this field. Supporting this comment, the importance of protecting intellectual property was also stressed.
4. Several speakers mentioned examples of various products on the market, e.g., cellular telephones presented with users handbooks in the form of recorded media. In their view, such instructional material should not be separately classified. In this respect, the representative of the International Chamber of Commerce stated that it would be difficult for traders to comply strictly with the separate classification rule, especially for software presented with other apparatus.
5. In this connection, the Committee agreed that, in the present Nomenclature, software was always classified separately in heading 85.24. Moreover, in the two proposed amendments submitted by the Review Sub-Committee, the software ("records", "tapes" or "other media") remained classified in that heading when presented with the apparatus for which it was intended.
6. The question having been put to a vote, the Committee decided to retain the draft text arising from the work of the Review Sub-Committee.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

7. However, following a proposal by one delegate, it was decided to delete the comma after "headings" in the first paragraph of the English text.
8. The text adopted is set out at Annex M/9 hereto.

x

x x

1	2
42.450 (HSC/22)	Classification of the "MVX" voice processing system.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. In discussing this issue it quickly became apparent that further technical information on the "MVX" voice processing system would not become available, in particular, information as to whether or not the system was freely programmable. Some delegates expressed the view that it was difficult to get such information.
2. One delegate was of the view that it would be essential to determine whether or not the system was freely programmable, as provided in Note 5 (A) to Chapter 84, although, in his view, given the specifications of the product in question, it appeared that the product was not freely programmable. He was of the view that the product was switching apparatus of heading 85.17.
3. Another delegate indicated that this system used a call detection card which processed incoming calls, and that it performed a switching function.
4. After discussion, the Committee agreed to classify this product in subheading 8517.30 as switching apparatus by application of GIR 1.
5. The Secretariat was instructed to prepare a Classification Opinion for this product for examination by the Working Party at its next session.

x

x x

1	2
NC0054E1	Classification of closed circuit video equipment.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

Due to lack of time, the Committee agreed to postpone this item until its next session in October 1999.

x
x x

1	2	5
NC0055E1	Study concerning the possible amendment of the Nomenclature with a view to clarifying the classification of digital cameras.	<u>See Annex M/10.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. One delegate argued that digital cameras were still in the process of development at present. Some digital cameras could be used as video cameras. Therefore, this issue should be examined during the next review cycle.
2. On the other hand, it was pointed out that a huge number of digital cameras were being traded internationally. Digital cameras should be identified in the HS and classified in a specific heading.
3. Consequently, the Committee agreed to regroup digital cameras within this review cycle, by 14 votes to 3.
4. With respect to the proposed texts of Alternatives I and II in the Annex to Doc. NC0055E1, after discussion, the Committee, by 13 votes to 1, decided to regroup digital cameras in heading 85.25 and to adopt the proposed texts of Alternative I set out in the Annex to Doc. NC0055E1. Finally, in conformity with Rule 19 of the Rules of Procedure of the HSC, the Chairman put this matter to a vote. The Committee decided to amend the legal texts concerned, by 16 votes to 0.
5. In addition, the Committee confirmed that this decision was intended to clarify, for the future, the classification of digital cameras, and not to decide their present classification.
6. The texts adopted are set out in Annex M/10 to this Report.

x

x x

ANNEX IJ

NEW QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
42.083 (HSC/21)	Classification of non-aromatic cut tobacco.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Many delegates were of the view that the non-aromatic cut tobacco in question had to be classified in heading 24.03. It was stated that, since this product was an intermediate product in the cigarette manufacturing process, which only had to be subjected to homogenisation and flavouring prior to finalization, it could not be regarded as “unmanufactured tobacco” of heading 24.01.
2. In this respect one delegate stated that tobacco with all or almost all veins removed, initially moistured, comminuted, mixed and initially cased should be classified in heading 24.01, while tobacco subjected to any other treatment (even if not ready for smoking), should be classified in heading 24.03. Another delegate argued that tobacco cut into narrow strips for a specific manufacturing process had to be regarded as “manufactured tobacco” of heading 24.03.
3. The Delegate of the EC informed the Committee that the tobacco in question was exported from the EU to the enquiring country (Poland). He further stated that he agreed with the Polish Administration to classify this product in heading 24.03.
4. Other delegates were of the view that the tobacco in question was cut into narrow strips only for the facilitation of transport. Since it was not put up for retail sale, and since “sauced” and “liquored” tobacco were mentioned as permitted processes in the Explanatory Note to heading 24.01, this product should be classified in heading 24.01. In this respect it was also mentioned that if such products were excluded from heading 24.01, that heading would become almost empty.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

5. Some delegates expressed concern as to the “ready for smoking” criterion mentioned in the Explanatory Note to heading 24.01 as a dividing line between headings 24.01 and 24.03. This criterion was misleading, because it suggested that intermediate products should be classified in heading 24.01. One delegate also expressed difficulties in creating a definitive demarcation between headings 24.01 and 24.03.
6. After discussion, the Committee decided (by 22 votes to 8) to classify the non-aromatic cut tobacco in question in heading 24.03 (subheading 2403.10).
7. The Secretariat was instructed to prepare a Classification Opinion to be examined by the next preessional Working Party. In this respect it was pointed out that the tobacco was cut into strips which were about 1 mm wide (not 2 mm wide as stated in the working document).
8. The Secretariat was also instructed to study the Explanatory Notes to Chapter 24 in order to modernise them on the basis of additional information and technical details to be submitted by administrations.

x

x x

1	2
42.074 (HSC/21)	Classification of certain special shampoos.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

"PARA" shampoo

1. With regard to the classification of "PARA" shampoo, opinions were divided among the delegates as to whether the article at issue should be classified in heading 30.04, 33.05 or 38.08.

Heading 30.04

2. The delegates who expressed their views in favour of heading 30.04, explained that the product should be considered primarily as a medicament due to its therapeutic and prophylactic value and actual use. They were of the view that the surface-active agents present in the product played only a subsidiary role in the use of the product. It was argued that Note 1 (d) to Chapter 30 should be read together with the General Explanatory Note to Chapter 33, which stated that "the products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value". It was stressed that the therapeutic or prophylactic value of "PARA" shampoo could not be considered as "subsidiary". Accordingly, they were of the view that the product was not a preparation of heading 33.05 and therefore Note 1 (d) to Chapter 30 was not applicable.
3. They also ruled out heading 38.08, by reference to exclusion (c) of the Explanatory Note to heading 38.08 which referred to disinfectants, insecticides, etc., having the essential character of medicaments, including veterinary medicaments.

Heading 33.05

4. The delegates who expressed their views in favour of heading 33.05 argued that the product should be considered primarily as a shampoo and stressed that it was presented as a shampoo and subheading 3305.10 specifically covered shampoos. It was also pointed out that according to the description of the product it could be used in the same manner as any other shampoo. They considered "PARA" shampoo as yet another special shampoo among many other special shampoos found in the market. Several delegates questioned whether this shampoo could indeed have therapeutic or prophylactic properties within the meaning of heading 30.04. It was argued that Note 1 (d) to Chapter 30 was meant to direct products of this nature to headings 33.03 to 33.07, and that these shampoos performed the dual function of washing the hair and removing lice and nits.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

5. They also ruled out classification in heading 38.08 for the reason that heading 38.08 was not meant for preparations used on the human body.

Heading 38.08

6. Certain delegates were in favour of heading 38.08, indicating that "PARA" shampoo should be considered as a pesticide preparation due to its intended use to eliminate lice and nits on the scalp. They were of the view that the surface-active agents were present in the product as a vehicle only. They did not accept that the product had the essential character of medicaments and therefore ruled out the application of exclusion (c) of the Explanatory Note to heading 38.08.

7. After discussion, the classification of "PARA" shampoo was put to a vote. The Committee first decided, by 22 votes to 5, to classify the product "elsewhere" than heading 30.04. The Committee then decided, by 21 votes to 3, to classify "PARA" shampoo in heading 33.05 (subheading 3305.10) rather than in heading 38.08, by application of GIR 1, Note 1 (d) to Chapter 30 and Note 3 to Chapter 33.

"NizoralTM" ketoconazole shampoo

8. One delegate stated that this product was more clearly described as a preparation having therapeutic and prophylactic value and therefore should be classified in heading 30.04 as a medicament.

9. Another delegate argued that "Nizoral" shampoo should be classified in heading 33.05 for the same reasons that "PARA" shampoo was classified in that heading, i.e., by application of Note 1 (d) to Chapter 30. He also noted that a similar product had already been classified by the Committee in heading 33.05, citing Classification Opinion 3305.10/1.

10. The classification of "Nizoral" shampoo was also put to a vote. The Committee decided, by 23 votes to 8, to classify "Nizoral" shampoo in heading 33.05 (subheading 3305.10) rather than in heading 30.04, by application of GIR 1, Note 1 (d) to Chapter 30 and Note 3 to Chapter 33.

11. To reflect the above two decisions, the Secretariat was instructed to prepare Classification Opinions for examination by the next preessional Working Party.

12. The Secretariat was also instructed to prepare suitable amendments to the Explanatory Notes, in order to facilitate the classification of similar products.

x

x x

1	2
42.065 (HSC/21) 42.470 (HSC/22) NC0080E1	Classification of "Katia" fungicides.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee took note of the comments made by the Pakistani Administration (Doc. NC0080E1) which stated that it had decided to accept the classification of "Katia" fungicides in heading 38.08 and therefore requested to delete this item from the Agenda of this Session. However in response to a request made by the Delegate of the EC, having regard to the fact that this matter had an impact on the EC export to that country, the Committee agreed to examine this item.
2. On the basis of the Secretariat comments set out in Doc. 42.065, the Committee, unanimously, decided to classify all three "Katia" fungicides, namely, "Katia Fungicide Sandal", "Katia Fungicide Roses" and "Katia Fungicide Jasmine", in heading 38.08 (subheading 3808.20) by application of GIR 1.
3. To reflect the Committee's decision, the Secretariat was instructed to prepare a Classification Opinion for examination by the next preessional Working Party.

x

x x

1	2
42.059 (HSC/21)	Classification of certain specially designed plastics bottles.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opinions were divided among the delegates as to whether the article at issue should be classified in heading 39.23, 39.24 or 39.26.

Heading 39.23

2. Certain delegates were of the opinion that, since the article basically consisted of two plastics bottles, it seemed very similar to bottles and flasks of subheading 3923.30. Heading 39.24 covered household articles such as tableware or kitchenware and could be considered to have wider and more general scope. Since heading 39.23 was more specific than heading 39.24 or heading 39.26 (residual heading), the product in question should be classified in heading 39.23.

Heading 39.24

3. Certain other delegates were of the opinion that heading 39.24 could cover household articles for use not only inside the home but also outside the home. The article in question was very similar to "luncheon boxes" referred to in Item (C) of the Explanatory Note to heading 39.24, since both were containers carried by children to school or by adults to work or a picnic.

4. In this connection, it was pointed out that there might be a misalignment between the term "luncheon boxes" in the English text and "boîtes à aliments" in the French text, since the English text meant boxes for prepared food and the French text meant boxes for storing foodstuffs such as flour, sugar, etc.

Heading 39.26

5. Other delegates were of the opinion that, according to the text of heading 39.23 and the Explanatory Note to that heading, heading 39.23 should be limited to cover containers for the packing or conveyance of commercial goods. Since the article in question was not for the conveyance or packing of commercial goods, heading 39.23 should be ruled out. Heading 39.24 should also be ruled out, since the article was not a household article, but was intended for use outside the home. Therefore, the article in question should be classified in residual heading 39.26.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. It was also stated that the reference to tool boxes or cases in Item (10) of the Explanatory Note to heading 39.26 supported classification in heading 39.26. Item (10) indicated that some containers for carrying personal goods were classifiable in heading 39.26, and the article in question could be considered to be used for containing and carrying beverages for use by persons away from home.
7. After a full discussion, the Committee voted on the question as follows :
12 votes in favour of heading 39.23;
10 votes in favour of heading 39.24;
8 votes in favour of heading 39.26.
Accordingly heading 39.26 was dropped from consideration.
8. The Committee then decided, by 15 votes to 13 (heading 39.23), to classify the article in question in heading 39.24 (subheading 3924.90).
9. To reflect this decision, the Secretariat was instructed to prepare a Classification Opinion and draft amendments to the Explanatory Notes to be examined by the next preessional Working Party.

x

x x

1	2	4	5
42.082 (HSC/21)	Alignment of the English and French versions of Note 3 to Section XVI.	<u>See Annex M/11.</u>	<u>See Annex M/11.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. During the examination of this item, various opinions were expressed by delegates regarding the scope of the terms “adapted” and “conçues” used in the present English and French versions of Note 3 to Section XVI, respectively.
2. By a large majority, the Committee finally approved the proposal to align the English text on the French, replacing the term “adapted” by “designed”.
3. The texts adopted are set out in Annex M/11 to this Report.

x

x x

1	2
42.067 (HSC/21)	Classification of frequency converters.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee decided unanimously that the standard model of frequency converter at issue was classifiable in subheading 8504.40, as proposed by the Secretariat.
2. In the absence of Argentina, it was agreed that this decision by application of GIR 1 would appear only in the Report.

x

x x

1	2
42.485 (HSC/22) NC0068E1	Possible amendment of the Explanatory Notes concerning ammonium nitrate fertilisers.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x

x x

1	2
42.478 (HSC/22)	Classification of certain hand and foot warmers.

DECISIONS OF THE HARMONIZED SYTEM COMMITTEE (O. Eng.)

1. On the basis of the Secretariat's comments in paragraphs 12 and 16 of Doc. 42.478, certain delegates stated that even though they could accept classification in heading 38.24, the following information might be sought from the Scientific Sub-Committee :
 - (a) Whether "articles of combustible materials" of heading 36.06 should undergo "combustion" during use; and
 - (b) If so, whether the combustion should be with the emission of both heat and light.
2. Several delegates explained that according to the definition of "combustible materials" in Note 2 to Chapter 36 and the examples given in the Explanatory Note to heading 36.06, it was clear that "combustion" required both the emission of heat and light. It was their view, therefore, that these "hand and foot warmers" which generated heat by flameless oxidation of the iron powder (as in the normal rusting process) could not be classifiable in heading 36.06.
3. After discussion, the Committee unanimously agreed to classify these hand and foot warmers in heading 38.24 (subheading 3824.90) by application of GIR 1.
4. To reflect the above decision, the Secretariat was instructed to prepare a Classification Opinion for examination by the next presessional Working Party.
5. The Secretariat was also instructed to prepare a suitable amendment to the Explanatory Notes for examination by the next presessional Working Party.

x

x x

1	2
42.487 (HSC/22) NC0070E1	Classification of certain drilled lumber used in construction.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening the discussion of this question, the Delegate of Canada outlined the importance and urgency of Canada's request for a classification decision vis-à-vis certain drilled lumber and urged the Committee to consider and classify the product at issue at the present session. He underlined the use of the wood in structural framing applications, the holes being specifically engineered for wiring applications and the precision drilling of these holes resulting in a notable increase in the cost of production. He also indicated that the classification of the product at issue was not a complex question and that all the information necessary to come to a decision was before the Committee.
2. To elucidate the scope of the terms used in heading 44.18, he exhibited a wooden shingle, which was classifiable in that heading. This kind of product, which was cited in the heading text as builders' joinery or carpentry, was dedicated by its very nature to construction applications. This was also the case with the drilled lumber in question, to the point that the products were committed to a specific use as wall studs and could no longer serve as general purpose lumber. Consequently, they should be classified in heading 44.18. Responding to a question from one of the delegations, the Canadian technical expert noted that the locations of the holes had to comply with industry and government regulations concerning critical size and placement standards. It was also noted that the drilled lumber did not require further processing on the worksite.
3. The Delegate of the United States, however, asked that the discussion of this matter be limited to a preliminary examination due to the fact that this issue was the subject of court proceedings in the United States in which Canada had taken an active role. He explained that such proceedings were at a particularly sensitive stage and that under the circumstances it would pose great difficulties for his Administration if a final decision were taken on this matter at this session.
4. He pointed out that at this session, the Committee had already agreed not to take a final decision on a number of questions which had been before the Committee for several sessions and that, as a matter of practice in the Committee, decisions involving disputes between two administrations often required more than a single session, so that a full discussion could take place. Moreover, he felt that, because this matter arose out of a dispute between the United States and Canada, a full and complete technical debate was necessary. In order to provide for this, it was essential that the United States have the opportunity to submit a note on this question and that the Committee have the opportunity

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

and adequate time to fully consider the contents of that note. To take a decision without affording this opportunity would preclude an important procedural necessity.

5. The Delegate of Canada pointed out that the U.S. Court of International Trade had already ruled on the classification question and that the appellant, an importer and not the government of Canada, had appealed to a higher court. Further, Canada suggested that the appellate court could only benefit from a decision of the HSC.
6. The Canadian Administration indicated that there appeared to be some confusion regarding this matter as being a dispute pursuant to Article 10 of the Convention. In fact, bilateral classification negotiations were not underway between the Customs authorities of the two Parties. Moreover, Canada presented this issue simply as a classification question for resolution by the Committee.
7. The Delegate of Canada disagreed with postponing the final decision, since the issue had already been postponed, at the request of the US Administration, from the 22nd Session. Subsequently, he raised a point of order and insisted on a vote by the Committee.
8. Other delegations indicated that the information available to the Committee was sufficient to take a classification decision at the present session. Following these interventions, the Committee, by 16 votes to 5, decided that the information available was sufficient to classify the product.
9. Based on this vote, the Delegate of the United States recognized that the Committee believed that it had enough information to vote on the classification of the products at issue, but he requested that the Committee provided his Administration with the opportunity to submit technical information on the meaning of the terms "joinery" and "carpentry" which were the key issues to be decided. At this time, there were no definitions of these terms before the Committee. He pointed out that Canada and the Secretariat were aware of his Administration's request by letter to defer this issue, which was not an unusual request. The Committee had, in the past, deferred issues involving disputes for no reason other than the statement that an administration had not had time to read a note that was timely submitted or that one of the administrations wanted to submit additional supporting information. He then asked the Committee to follow its past practice and afford his Administration the opportunity to submit technical information that was not before the Committee.
10. The Committee then voted on whether a decision as to the classification of the products at issue should be taken today. The Committee decided by 17 votes to 7 that it should.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

11. The Committee finally decided to classify, by 21 votes to 1, the drilled lumber in heading 44.18 (subheading 4418.90) and not in heading 44.07, there being no votes in favour of heading 44.21. To reflect the Committee's decision, the Secretariat was instructed to prepare a Classification Opinion for the drilled lumber and to prepare a draft amendment to the Explanatory Notes for examination by the next preessional Working Party.

x

x x

1	2
42.468 (HSC/22)	Classification of coins.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. During a brief discussion, the Committee agreed that at first sight, the classification of the articles at issue did not seem to pose any major problem.
2. One delegate nevertheless felt that an Explanatory Note should be envisaged to clarify the classification of these coins, as in the EC Combined Nomenclature.
3. The Committee unanimously decided to classify the articles at issue in subheading 7118.10.
4. The Committee therefore instructed the Secretariat to prepare a draft Explanatory Note for examination by the next HSC preessional Working Party. In this regard, the EC was invited to send the Secretariat a text concerning its proposal.

x

x x

1	2
42.510 (HSC/22)	Classification of aluminium covers for cans.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. Several delegates gave differing opinions on how to determine whether the articles at issue were covered by the text of heading 83.09 or whether they should be considered simple articles of aluminium of heading 76.16.
2. There being no consensus the Chairman put the matter to a vote and the Committee decided, by 19 votes to 3, to classify the covers in question in subheading 8309.90 by application of GIR 1.
3. The Secretariat was instructed to prepare a draft Classification Opinion and to amend the Explanatory Note to heading 83.09 to include this type of product. The drafts would be examined by the next preessional Working Party.

x

x x

1	2
42.486 (HSC/22)	Classification of tools made of base metal.
42.509 (HSC/22)	Classification of a freezer for foodstuffs.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

Due to lack of time, the Committee agreed to postpone these items until its next session in October 1999.

x

x x

1	2
42.461 42.733 (HSC/22) NC0077E1	Classification of the "Pentium II CPU".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Delegate of Korea explained to the Committee the importance to his Administration of obtaining a decision at this session on the classification of the Pentium ® II processor and the willingness of his Administration to abide by whatever decision the Committee took.
2. The representative of the ICC pointed out a number of concerns that the trade community had with classification of the Pentium ® II in heading 84.73 as a part of an ADP machine. The trade community did not disagree with the analyses done by administrations. In the past, this product was classified according to its essential character and principal function, that being a microprocessor or central processing unit (CPU) of heading 85.42. Classification in heading 84.73 would mean that it would be classified according to its packaging and not by the function that it performed. The trade was also concerned with the implications for statistical reporting, rules of origin and trade negotiations which a classification decision in heading 84.73 would entail.
3. The Chairman responded to the ICC's comments by explaining that classification in the Harmonized System (HS) is undertaken in accordance with HS principles (GIRs, legal text and notes). It does not take account of duty rates or rules of origin considerations.
4. The Committee unanimously agreed to classify the Pentium ® II processor in heading 84.73 and, more specifically, subheading 8473.30. The Committee requested the Secretariat to draft a Classification Opinion to reflect its decision.
5. In arriving at its decision, the Committee agreed with the analysis put forward by the United States Administration in Doc. NC0077E1. Note 5 (B) (a) to Chapter 85 was not applicable, as the Pentium ® II was not a monolithic integrated circuit. Note 5 (B) (b) was not applicable, as the Pentium ® II did not possess a substrate on which thin or thick film circuits had been formed. Finally, Note 5 (B) (c) was not applicable, as the Pentium ® II was not a microassembly.
6. Several delegates expressed the view that the legal text and the Explanatory Notes to heading 85.42 required updating to better represent present day technology.

x
x x

1	2
42.493 (HSC/22)	Classification of the "PIX-DSX-1 Digital Cross-Connect".
42.724 (HSC/22) NC0084E1	Proposal by Argentina for the amendment of the Subheading Explanatory Note to subheading 8524.39.
42.731 (HSC/22)	Classification of language laboratory equipment.
NC0056E1	Study with a view to establishing guidelines for the classification of double-cab pick-up vehicles.
42.477 (HSC/22)	Classification of two-wheeled golf carts.
42.497 (HSC/22)	Classification of laser pointers.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

Due to lack of time, the Committee agreed to postpone these items until its next session in October 1999.

x

x x

1	2
42.726 (HSC/22)	Classification of a "dialyser" and a "microbarrier".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Classification of a "dialyser"

1. The Delegate of Turkey was of the opinion that the article in question was not only a filter of heading 84.21 but also a kind of a medical instrument included in heading 90.18, since it could be used solely with an artificial kidney apparatus. Since Note 1 (m) to Section XVI excluded from this Section articles of Chapter 90, the article in question should be classified in heading 90.18.
2. The Delegate of the EC, however, agreed with the Secretariat's opinion that the article in question was only part of an apparatus of Chapter 90 and that it had the function of a filter for purifying blood by evacuating microaggregates from blood and, therefore, should be classified in heading 84.21. By application of Note 2 (a) to Chapter 90, parts and accessories which in themselves constituted articles falling in any particular heading of Chapter 90, 84, 85 or 91 were in all cases to be classified in their respective headings. This was also confirmed by Part (III) of the General Explanatory Note to Chapter 90.
3. The Committee decided, by 23 votes to 1, to classify the "dialyser" in heading 84.21 (subheading 8421.29), by application of Note 2 (a) to Chapter 90 (GIR 1).

Classification of a "microbarrier"

4. The Committee unanimously agreed with the Secretariat's view in paragraph 22 of Doc. 42.726 that the article in question was specially designed to filter stored blood and not used for the purposes of diagnosis, treatment or operation. Therefore, the Committee decided to classify the "microbarrier" in heading 84.21 (subheading 8421.29), by application of GIR 1.
5. To reflect these decisions, the Secretariat was instructed to prepare two Classification Opinions on the above-mentioned articles, for examination by the next preessional Working Party.

x

x x

1	2
42.462 (HSC/22)	Scope of the term "scale" in subheading 9503.20.
42.437 (HSC/22)	Classification of certain stationery sets.
NC0057E1	Classification of certain microwave ovens.
NC0058E1	Classification of vehicles with removable seats or benches.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

Due to lack of time, the Committee agreed to postpone these items until its next session in October 1999.

x

x x

1	2
NC0059E1	Classification of multifunctional digital copiers.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x

x x

1	2	3
NC0060E2	Classification of hands-free radiotelephony devices and possible amendments to heading 85.18 and subheading 8518.30 and to the Explanatory Note concerned.	<u>See Annex M/12.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee noted that the classification of the devices at issue had been settled without discussion, given that their classification in subheading 8518.50 had been demonstrated by a Secretariat study and accepted by the Administration which had submitted this question.
2. Turning to the draft amendments to the texts of heading 85.18 and subheading 8518.30, the Committee first proposed a new text for the French version. It then decided, by a large majority, to insert the expression “, and sets consisting of a microphone and one or more loudspeakers” after “headphones and earphones, whether or not combined with a microphone” in both the heading text and subheading text.
3. The Committee decided to submit the corresponding Explanatory Note amendments to the Review Sub-Committee for the purpose of identifying products that would be covered by amended subheading 8518.30.
4. The texts adopted are set out in Annex M/12 to this Report.

x

x x

1	2
NC0061E1	Classification of a laminated product, called "PolySwitch", consisting of outer layers of nickel and an inner layer of plastics.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. Referring to the first paragraph of the working document, one delegate stated that GIR 2 (a) was not applicable to the product concerned, which should be classified by application of GIR 1 and GIR 3 (b).
2. Another delegate supported this view, pointing out that Note 1 (d) to Chapter 75 was relevant to classification of the product in this Chapter.
3. A third delegate spoke in favour of applying GIR 3 (b), but took the view that the article's essential character derived from the sheet of plastics, which imparted the electrical characteristics that permitted use in the manufacture of resettable fuses. He stated that heading 39.21 was appropriate for the classification of this product.
4. The Committee voted, 17 in favour and 3 against, to classify the laminated product called "Polyswitch" in subheading 7506.10 by application of GIR 3 (b) and taking into account Note 1 (d) to Chapter 75.
5. The Committee instructed the Secretariat to prepare a draft Classification Opinion for examination by the next pre-sessional Working Party.

x

x x

1	2
NC0062E1	Classification of the "Smirnoff Mule" beverage.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x
x x

1	2
NC0063E1	Classification of "Jumicar" vehicles.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Delegate of the EC noted that the origin of this classification question was a dispute between Finland, a Member of the EC, and Poland arising from a Binding Tariff Information (BTI) issued by the Finnish Administration. With a view to finding a bilateral solution, this matter should have also been submitted to the EC which was the competent authority to settle disputes between the EC and its 15 Members and another HS Contracting Party as to the classification of goods in the HS.
2. With regard to the classification of "JUMICAR" vehicles, the Delegates of the EC and Finland, supported by other delegates, indicated that such vehicles could not be regarded as "motor vehicles principally designed for the transport of persons" of heading 87.03, given that they were used (1) by children under supervision at specially designed locations (2) for road-traffic education while having fun, and they had (3) bodywork of plastics, (4) a small engine and (5) a very low maximum speed of 20 km/h. As such, "JUMICAR" vehicles could never transport adults, could not be used on motorways and were not subject to road safety standards, registration, regular technical inspection, etc., applicable to the vehicles of heading 87.03.
3. These delegates stated that Note 1 to Section XVII excluded articles of heading 95.01, 95.03 or 95.08 from that Section. In response to the question posed by the Secretariat in paragraph 6 of Doc. NC0063E1, they noted that heading 95.01 covered "wheeled toys designed to be ridden by children", and Item (7) of Part A of the Explanatory Note to that heading (page 1710) provided an excellent description of "JUMICAR" vehicles. Therefore, "JUMICAR" vehicles were classifiable in heading 95.01.
4. On the other hand, the Delegate of Poland, referring to the Secretariat's comment in paragraph 8 of Doc. NC0063E1, pointed out that "JUMICAR" vehicles were completely different from "dodge'em" cars of heading 95.08. "JUMICAR" vehicles had a reciprocating piston engine, a rigid construction and wheels, and could also be driven on motorways. They had a very high price range compared to the toys of heading 95.01 and their maximum speed and registration, etc. were not relevant to their classification in the HS. Therefore, "JUMICAR" vehicles were classifiable in heading 87.03 in light of the Explanatory Note to that heading.
5. Several other delegates also agreed with classification in heading 87.03, taking into account the fact that "JUMICAR" vehicles had a high payload, a width over 100 cm and that they could be driven not only by children but also by young people, according to the description given in the working document. Further, "JUMICAR" vehicles were similar to

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

specialized vehicles such as golf carts or go-carts, which were also not designed to travel on the road but were classifiable in heading 87.03.

6. The delegates who preferred heading 95.01, however, responded that the value of goods was not a criterion provided for in the HS for classification purposes. Also, golf carts, go-carts or similar vehicles were vehicles designed to be driven by adults, not by children.
7. After discussion, the Committee decided, by 13 votes to 10, that "JUMICAR" vehicles were classifiable in heading 95.01. To reflect its decision, the Committee instructed the Secretariat to prepare a draft Classification Opinion on the basis of the description provided in Doc. NC0063E1 and the discussions summarised above, for examination by the next presessional Working Party.

x

x x

1	2	4
NC0064E1	Amendment of the Explanatory Note to heading 96.01.	<u>See Annex M/30.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee approved, without modification, the proposed amendments aimed at harmonizing the Explanatory Note to heading 96.01 with the new wording of Note 3 to Chapter 5.
2. The texts adopted are set out in Annex M/30 to this Report.

x

x x

1	2
NC0066E1	Classification of "Meloxicam".

DECISIONS OF THE HARMONIZED SYTEM COMMITTEE (O. Eng.)

The Committee decided to postpone examination of this item until its next session.

x

x x

1	2
NC0041E1	Classification of a compression type refrigerator.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to lack of time, the Committee agreed to postpone this item until its next session in October 1999.

x
x x

1	2
NC0067E1	Classification of a "Marine loading arm".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Delegate of Morocco viewed the "marine loading arm" as a device which consisted mainly of piping which had, affixed at either end, automatic valves which aided the egression and ingression of liquids to and from the ship. As the device contained piping and valves, it was excluded from classification in Section XV and classification was directed to Section XVI. The principal function of the apparatus was determined by the valve component and, consequently, classification in heading 84.81 was appropriate. If the Committee did not share this view, then heading 84.81 was still applicable by use of GIR 3 (c). Headings 84.25 to 84.30 were ruled out, and if the choice was between headings 84.79 and 84.81, heading 84.81 was last in numerical order (GIR 3 (c)). The Delegate noted that there was an exclusion in heading 84.28 for liquid elevators (heading 84.13).

2. The Delegate of the EC agreed with the Secretariat's comments as outlined in Doc. NC0067E1. The valves were an option and were not included as part of the "marine loading arm". The valves performed a secondary function as explained by the Secretariat and did not operate while the apparatus performed its work. They only operated when there was risk of pollution. Heading 84.28 covers a wide range of machinery for the mechanical handling of materials and this was the function performed by the "marine loading arm". Consequently, the apparatus was classified in heading 84.28 by application of GIR 1 and there was no requirement to use GIR 3(c). The Delegate concluded by indicating that he agreed with the Secretariat that the "marine loading arm" was not a liquid elevator (heading 84.13).

3. The Committee, by 23 votes to 3, classified the "marine loading arm" in heading 84.28. The Committee then agreed to classify the product, more specifically, in subheading 8428.90 by application of GIR 1 and GIR 6. The Secretariat was requested to draft a Classification Opinion to reflect this decision. The Secretariat was also instructed to draft amendments to the Explanatory Notes to the effect that this heading was not limited to lifting and handling equipment for solid materials but also included such machinery for liquids, gases, etc.

x

x x

1	2
NC0069E1	Classification of bakers' wares (waffles).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Chairman indicated that, due to the publication of the document on 4 May 1999, only a preliminary discussion could be held at this session.
2. Several delegates pointed out that, based on the present legal situation, all waffles and wafers had to be classified in subheading 1905.30.
3. Other delegates were of the view that waffles and wafers with a water content of more than 10 % by weight could not be classified in subheading 1905.30. They believed that the legal texts had to be read in combination with the Explanatory Notes, thus classifying such products in subheading 1905.90.
4. After a short exchange of views, the Committee concluded that this classification issue should be settled at its next session in October. On that basis, the Committee could decide what further action should be taken with regard to the legal texts and/or the Explanatory Notes.

x

x x

1	2
NC0071E1	Classification of the "Media Composer 1000".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Due to the late publication of the working document, it was agreed that this item should be postponed to the Committee's next session.

x
x x

ANNEX K

HS ARTICLE 16 RECOMMENDATION

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0065E1	Draft Article 16 Recommendation.			<u>See Annex Q.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng./Fr.)

1. The final text of the draft Recommendation contains the initial draft appended to Doc. NC0065E1 (the results of the HSC's 12th to 22nd Sessions), amended as indicated below, plus the amendments adopted at this session and reproduced in Annexes M/2, M/3, M/6 to M/12 and N/1 to N/23 to this Report.

Approval of the amendments adopted at the HSC's 12th to 22nd Sessions

2. The Committee adopted the amendments provisionally approved at its 12th to 22nd Sessions and reproduced in the Annex to Doc. NC0065E1 (HSC/23 – Agenda Item X), subject to the changes proposed by the Secretariat in the Appendix to that document, plus several drafting amendments suggested in the meeting. The amendments made to the aforementioned Annex are as follows :
 - Various editorial or presentational amendments referred to in paragraph 5 of the Appendix to Doc. NC0065E1;
 - The French version of the text of heading 19.01 (paragraph 10 of the Appendix);
 - The French version of new Subheading Note 1 to Chapter 26 (paragraph 11 of the Appendix);
 - The French version of the text of headings 26.18 and 26.19 (additional amendments) (paragraph 12 of the Appendix);
 - The text of heading 26.21 (paragraphs 13 and 14 of the Appendix);

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

- New Note 3 to Chapter 27 (paragraphs 16 to 21 of the Appendix). In the text put forward by the Secretariat, the expression "including such oils referred to in Note 2" was replaced by "as described in Note 2", at this session;
- New subheading 2710.91 : The acronyms PCBs, PCTs and PBBs were supplemented by the full names of the products concerned, at this session;
- New Note 5 to Chapter 38 and deletion of new Subheading Note 2 to Chapter 38 (paragraphs 22 to 29 of the Appendix);
- The French version of the text of new heading 38.25 (paragraph 30 of the Appendix);
- The French version of heading 44.10 (paragraph 31 of the Appendix);
- The text of heading 58.04 and Note 1 to Chapter 59 (additional amendments) (paragraph 32 of the Appendix);
- The French version of the text of subheading 7112.30 (paragraph 33 of the Appendix). However, for the sake of uniformity, the text proposed by the Secretariat, i.e., "autres que les cendres d'orfèvre" was replaced by "à l'exclusion des cendres d'orfèvre", at this session;
- Note 3 to Chapter 85 (paragraph 34 of the Appendix).

Simultaneous amendments to the same text

3. The Committee noted that the following legal texts were the subject of two or more different amendments and that if a Contracting Party objected to one of the amendments recommended by the Council, the final Recommendation would have to be adapted accordingly :

- Subheading 0303.10 (Doc. 38.960/L/3 and M, Doc. 40.260/M/9);
- Heading 27.10 (Doc. 40.260/M/1, Doc. NC0090B2/N/2);
- Subheading 2924.22 (Doc. 38.960/L/3 and M, Doc. 42.750/L/4);
- Subheading 2933.40 (Doc. NC0090B2/N/7, Doc. NC0090B2/N/9);
- Note 4 (h) to Chapter 30 (Doc. 42.100/L/10, Doc. NC0090B2/M/3);
- Heading 40.12 (Doc. 41.600/K/4, Doc. 41.600/K/7);
- Subheading Note 1 to Chapter 44 (Docs. 38.760/N and 38.960/M, Doc. NC0090B2/N/12);
- Heading 44.09 (Doc. 40.600/L/3, Doc. NC0090B2/M/7);
- Subheading 8471.50 (Doc. 40.600/M/7, Doc. 41.600/K/11);

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

- Subheadings 8542.1 to 50 (Doc. 38.960/L/6 and M (8542.12), Doc. NC0090B2/N/23);
- Note 1 (h) to Chapter 90 (Doc. 40.260/M/2, Doc. NC0090B2/M/10).

Adoption of the final draft Recommendation

4. The Committee unanimously adopted the final draft Recommendation whose content is specified in paragraphs 1 and 2 above and set out in draft Annex Q, subject to the following changes and several editorial amendments made during the adoption procedure :
- Preamble - "RECOMMENDS" : Insertion of the expression "to the said Convention" in the first line to make clear that the Contracting Parties concerned are those to the Harmonized System Convention, plus a consequential amendment in the second line;
 - New Note 3 to Chapter 27 :
 - First paragraph (French version) : Replacement of "telles qu'elles" by "telles que";
 - Item (b), penultimate line (French version) : Replacement of " , utilisées" by "utilisés", since that term relates to "additifs";
 - Subheading 2710.1 (English version) : Deletion of the word "other" before "preparations";
 - Subheading 2710.91 : Insertion of the acronyms "PCBs", "PCTs" and "PBBs" in brackets after the product names;
 - Subheadings 2805.11 and 2805.12 (French version) : Replacement of the single dash by two dashes;
 - New Subheading Note 1 to Chapter 38 :
 - In the instructions, replacement of "Notes 1 and 2" by "Note 1";
 - French version : Replacement of "en l'état de leur" by "en l'état à leur";
 - English version : Replacement of the word "mean" by "are";
 - Subheadings 3906.10 and 3907.60 : Replacement of the two dashes by a single dash;
 - Headings 41.08 to 41.11 : Deletion of these codes placed in square brackets;
 - Present Note 4 to Chapter 48 - Part entitled "For paper or paperboard weighing more than 150 g/m²" - Items (b) 2 and (c) (English version) : Insertion of the word "of" before "more than" (three times);
 - Note 1 (e) to Chapter 84 (French version) : Insertion of the word "les" before "appareils photographiques" and of "du" before "n° 85.25";
 - New subheadings 8467.2 and 8467.21 to 8467.23 : In the instructions, replacement of "8467.23" by "8467.29" (twice);
 - Note 3 to Chapter 85. Second paragraph (French version) : Replacement of this reference by "Note 3 (b)";

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

- Heading 85.18 and subheading 8518.30 (French version) : Insertion of "par" between "constitués" and "un microphone";
- Present Note 6 to Chapter 90 – First line : Replacement of "6.-" by "7.-".

5. The draft Recommendation adopted by the Committee is set out in Annex Q to this Report.

6. This draft will be submitted to the Council in June 1999 for adoption and subsequent implementation under the provisions of Article 16 of the Harmonized System Convention. On this basis, the recommended amendments in respect of which no objections are raised within the stipulated period will enter into force for all Contracting Parties on 1 January 2002.

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ANNEX L

OTHER QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0038E1	List of questions which might be examined at a future session.	<u>See Annex R.</u>	<u>See Annex R.</u>	<u>See Annex R.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.).

1. The Committee took note of the list of questions in the Annex to Doc. NC0038E1 and decided to delete questions 5 and 7 (which were subject to a new request being entered by the Administrations concerned) and question 13 (following Switzerland's withdrawal of its reservation).
2. With regard to questions 1 and 2 in the Annex, the Committee instructed the Secretariat to contact the OPCW and ICAO to determine whether the examination of these questions should continue at the next review cycle and be placed, if necessary, on the Agenda for the next Review Sub-Committee session.
3. The above-mentioned list, updated by deleting the questions mentioned in paragraph 1 and adding a new series of questions raised at the meeting for examination in greater detail or at a later date, is set out in Annex R to this Report.

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