



SCIENTIFIC
SUB-COMMITTEE

-
14th Session

42.762 E
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SC-3

Brussels, 14 January 1999.

PROPOSED AMENDMENTS TO CERTAIN SUBHEADINGS IN CHAPTER 29

(Item II.9 on Agenda)

Reference documents :

42.240 (RSC/18)
42.500, Annex B/8 (RSC/18 – Report)

I. BACKGROUND

1. The Review Sub-Committee (18th Session, October 1998) considered a proposal contained in a note, submitted by the Embassy of the People's Republic of China (PRC), to amend the texts of certain subheadings in Chapter 29. The Note from China is excerpted below (see Part II).
2. The Delegate of China explained that the proposal was intended to clarify the classification of certain chemicals and to provide consistency with regard to the wording of legal texts. After a preliminary exchange of views, the Review Sub-Committee decided to seek the advice of the Scientific Sub-Committee on the Chinese proposal. In particular, advice was sought as to whether (i) the present legal texts sought to be amended by the proposal were unclear and, therefore, needed to be amended; and (ii) whether the proposed amendments would change the scope of the subheadings involved.

II. NOTE FROM CHINA

3. "Normally, we consider that the commodities of Chapter 29 are in a chemically pure state and have relatively strict systematic chemical names. Further, most subheadings of a particular heading cover specific substances which are listed regularly and according to their structures and their names. As such, commodities in different headings have similar systematic suffixes, so it is important to maintain consistency of these suffixes and to ensure that the same meaning cannot be misunderstood to fall within the scope of other commodities. For example, in heading 29.05 the substances are arranged in the order of methanol, propanol, butanol, pentanol and other advanced saturated monohydric alcohols. We see a similar order in heading 29.15, but the legal texts and suffix names in headings 29.05 and 29.15 are not consistent. In subheadings 2905.15 and 2905.16, the texts read,

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respectively, “pentanol and isomers thereof” and “octanol and isomers thereof”. However, the corresponding legal text of subheading 2915.60 reads “butyric acids, valeric acids, their salts and esters”.

4. We think that the term “valeric acids” covers a group of acid isomers containing five carbon atoms, in the same manner that “pentanol” covers a group of alcohol isomers containing five carbon atoms. The term “pentanol” can include *n*-pentanol and its isomers. At present, the scope of “pentanol” could easily be misunderstood as meaning “*n*-pentanol”. So we suggest that the legal texts of subheadings 2905.15, 2905.16 and 2915.60 be amended as follows :

“2905.15 -- *n*-Pentanol and isomers thereof

2905.16 -- *n*-Octanol and isomers thereof

2915.60 -- *n*-Butanoic (*n*-butyric) acid, *n*-pentanoic (*n*-valeric) acid, their salts and esters”.

Alternatively, we can modify subheadings 2905.15 and 2905.16, as follows :

“2905.15 -- Pentanols

2905.16 -- Octanols”.

In this case, present subheading 2915.60 would remain unchanged.

5. In headings 29.33 and 29.34, we find other inconsistencies in the texts. All the subheading texts in these two headings use the expression “in the structure” or “not further fused”. Indeed, these two expressions are not contradictory. The expression “in the structure” just means the conjunctive order of the atoms in a chemical molecule. It cannot stand for the real structure and does not present the angular forces and distances between atoms.
6. For example, substances containing one of the following structures in the molecule --



-- are quite different in real structure and stereo-configurations, and their chemical properties are different. However, they should both be classified in subheading 2933.3 because of the text “in the structure”.

7. The expression “not further fused” is also used to illustrate the relationship of connection between rings systems. The conjugated property and stereo relationship between ring systems will change substantially when the atoms (normally hydrogen atoms) in the ring are substituted by other atoms or groups. The text “whether or not hydrogenated” also indicates that the initial meaning of the subheading refers to the connecting sequence in the molecule. From this point of view, the phrases “in the structure” and “not further fused” are used to represent the structural connections from different

aspects. In order to maintain consistency and to avoid misunderstanding, we think the phrase “in the structure” should be inserted in subheadings 2933.40, 2934.20 and 2934.30.”

III. SECRETARIAT COMMENTS

8. The proposals made by China are set out formally in the Annex to this document. China raises two main points in its proposals. The first concerns an apparent lack of consistency in the wording of certain subheadings in headings 29.05 and 29.15 (see paragraphs 3 and 4 above).
9. In the present Nomenclature, the texts of subheadings 2905.15 and 2905.16 specifically provide that isomers of pentanol and octanol, respectively, are included in those subheadings, whereas the text of subheading 2915.60 only implies that isomers of butyric and valeric acid are included by employing the plural of those acid names.
10. In this context, China makes two alternative proposals. In the first alternative, it suggests that the terms “pentanol”, “octanol”, “butyric acids” and “valeric acids” be specified as being the normal isomer of each compound, i.e., “*n*-pentanol”, “*n*-octanol”, “*n*-butyric acid” and “*n*-valeric acid”, respectively. China also suggests the inclusion of the synonyms “*n*-butanoic” and “*n*-pentanoic” with “*n*-butyric” and “*n*-valeric”, respectively, in subheading 2915.60.
11. In the Secretariat’s view, the expressions “*n*-Pentanol and isomers thereof” and “*n*-Octanol and isomers thereof” in subheadings 2905.15 and 2905.16 have, for practical purposes, the same scope as the present texts, i.e., “Pentanol (amyl alcohol) and isomers thereof” and “Octanol (octyl alcohol) and isomers thereof”, respectively. However, since *n*-pentanol and *n*-octanol are themselves isomers of pentanol and octanol, respectively, it is not inappropriate to refer more generally to the isomers of pentanol and octanol, and not to those of the normal isomers, in the subheading texts. The Secretariat notes that this particular proposal by China does not retain the present references to “(amyl alcohol)” and “(octyl alcohol)”; it is not clear whether this omission is intentional or not. In any case, the Secretariat retains these expressions in square brackets in the Annex for the Sub-Committee’s consideration.
12. The proposal to amend subheading 2915.60 has the effect of changing the scope of that heading. If only the normal isomers of butyric and valeric acid, along with their salts and esters, are covered by the new text, then isobutyric and isovaleric acids and their derivatives would have to fall to the residual subheading 2915.90. It does not seem from China’s comments above that this is the intention of the proposal; instead, it would appear that China is simply trying to establish some consistency in terminology between headings 29.05 and 29.15. The Secretariat has therefore inserted the expression “isomers thereof” in the proposed texts and placed it in square brackets.

13. The Secretariat has no objection to the proposed insertion of the synonyms “butanoic” and “pentanoic” in the text of subheading 2915.60. This would be consistent with the inclusion of the synonyms “amyl alcohol” and “octyl alcohol” in the texts of subheadings 2905.15 and 2905.16, respectively. However, the Secretariat wonders whether such a legal amendment is really needed, since the terms “butyric” and “valeric” are clear enough to allow administration of the HS without legal problems. The Sub-Committee is asked to give its views in this regard.
14. In China’s second alternative, it is suggested that the expressions “Pentanol (amyl alcohol) and isomers thereof” and “Octanol (octyl alcohol) and isomers thereof” be replaced by the plural terms “Pentanol” and “Octanol”, respectively. Thus, the plural terms would imply that the isomers are included, just as the terms “butyric acids” and “valeric acids” imply the inclusion of the isomers of these acids in subheading 2915.60. In the Secretariat’s view, this alternative is better than the first alternative. However, the amendments would not change the scope of subheadings 2905.15 and 2905.16. Further, the Secretariat is not aware of any problems being encountered by Member administrations with the legal texts of these subheadings and therefore wonders whether any amendment is necessary in this regard.
15. The second main point raised by China (see paragraphs 5 to 7 above) concerns the insertion of the expression “in the structure” in subheadings 2933.40, 2934.20 and 2934.30. This proposal is straightforward and would make the texts of these subheadings consistent with those of other subheadings in headings 29.33 and 29.34. However, the Secretariat wonders if this amendment would substantially improve the present texts. Indeed, in the French version, subheadings 2933.40, 2934.20 and 2934.30 at present make reference to the structure, so additional wording concerning the structure would seem unnecessary. For these reasons, the Secretariat has placed these amendments in square brackets for the Sub-Committee’s consideration.

IV. CONCLUSION

16. Taking into account the Note from China (paragraphs 3 to 7 above) and the Secretariat’s comments (paragraphs 8 to 15 above), the Sub-Committee is requested to give its advice on the following :
- (a) whether the present texts of subheadings 2905.15, 2905.16, 2933.40, 2934.20 or 2934.30 are unclear and, therefore, need amendment; and
 - (b) whether the amendments proposed by China would change the scope of the subheadings involved.
17. Depending on its conclusions on questions in paragraph 16 above, the Sub-Committee is also invited to examine the draft amendments to the Nomenclature and Explanatory Notes set out in the Annex.

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ANNEXE

PROJET D'AMENDEMENT DE LA NOMENCLATURE STRUCTUREE ET DES NOTES
EXPLICATIVES DE CERTAINES POSITIONS DU CHAPITRE 40
(Point II.9 de l'ordre du jour)

ANNEX

DRAFT AMENDMENTS TO THE STRUCTURE AND EXPLANATORY NOTES
CONCERNING CERTAIN HEADINGS OF CHAPTER 40
(Item II.9 on Agenda)

PROCEDURE DE L'ARTICLE 16

A. AMENDEMENT A LA NOMENCLATURE

CHAPITRE 29.

[N°s 2905.15 et 2905.16.

Nouvelle rédaction :

“2905.15 -- *n*-Pentanol [(alcool *n*-amylique)] et ses isomères
2905.16 -- *n*-Octanol [(alcool *n*-octylique)] et ses isomères”.

N° 2915.60.

Nouvelle rédaction :

“2915.60 -- acides *n*-butanoïque (*n*-butyrique), et *n*-pentanoïque (*n*-valérique), [leurs isomères,] leurs sels et leurs esters”.

OU

[N°s 2905.15 et 2905.16.

Nouvelle rédaction :

“2905.15 -- Pentanols
2905.16 -- Octanols”.]

N° 2933.40.

Nouvelle rédaction :

“2933.40 -- Composés [dont la structure comporte des] [comportant une structure à] cycles quinoléine ou isoquinoléine (hydrogénés ou non) sans autres condensations”.

N° 2934.20.

Nouvelle rédaction :

“2934.20 -- Composés [dont la structure comporte des] [comportant une structure à] cycles benzothiazole (hydrogénés ou non) sans autres condensations”.

ARTICLE 16 PROCEDURE

A. AMENDMENTS TO THE NOMENCLATURE

CHAPTER 29.

[Subheadings 2905.15 and 2905.16.

Delete and substitute :

“2905.15 -- *n*-Pentanol [(*n*-amyl alcohol)] and isomers thereof
2905.16 -- *n*-Octanol [(*n*-octyl alcohol)] and isomers thereof”.

Subheading 2915.60.

Delete and substitute :

“2915.60 -- *n*-Butanoic (*n*-butyric) acid, *n*-pentanoic (*n*-valeric) acid, [isomers thereof,] their salts and esters”.

OR

[Subheadings 2905.15 and 2905.16.

Delete and substitute :

“2905.15 -- Pentanols
2905.16 -- Octanols”.]

Heading 2933.40.

Delete and substitute :

“2933.40 -- Compounds containing [in the structure] a quinoline ou isoquinoline ring-system (whether or not hydrogenated), not further fused”.

Heading 2934.20.

Delete and substitute :

“2934.20 -- Compounds containing [in the structure] a benzothiazole ring-system (whether or not hydrogenated), not further fused”.

N° 2934.30.

Nouvelle rédaction :

“2934.30 -- Composés [dont la structure comporte des] [comportant une structure à cycles phénothiazine (hydrogénés ou non) sans autres condensations”.

B. MODIFICATIONS DES NOTES EXPLICATIVES

[Page 359. N°s 2905.15 et 2905.16.

Nouvelle rédaction :

“2905.15 -- *n*-Pentanol [(alcool *n*-amylique)] et ses isomères
2905.16 -- *n*-Octanol [(alcool *n*-octylique)] et ses isomères”.

Page 383. N° 2915.60.

Nouvelle rédaction :

“2915.60 -- acides *n*-butanoïque (*n*-butyrique), et *n*-pentanoïque (*n*-valérique),
[leurs isomères,] leurs sels et leurs esters”.

OU

[Page 383. N°s 2905.15 et 2905.16.

Nouvelle rédaction :

“2905.15 -- **Pentanol**
2905.16 -- **Octanol**”.]

N° 2933.40.

Nouvelle rédaction :

“2933.40 -- **Composés [dont la structure comporte des] [comportant une structure à] cycles quinoléine ou isoquinoléine (hydrogénés ou non) sans autres condensations”.**

N° 2934.20.

Nouvelle rédaction :

“2934.20 -- **Composés [dont la structure comporte des] [comportant une structure à] cycles benzothiazole (hydrogénés ou non) sans autres condensations”.**

Heading 2934.30.

Delete and substitute :

"2934.30 -- Compounds containing [in the structure] a phenothiazine ring-system (whether or not hydrogenated), not further fused".

B. AMENDMENTS TO THE EXPLANATORY NOTES

[Page 359. Subheadings 2905.15 and 2905.16.

Delete and substitute :

"2905.15 -- *n*-Pentanol [(*n*-amyl alcohol)] and isomers thereof
2905.16 -- *n*-Octanol [(*n*-octyl alcohol)] and isomers thereof".

Page 383. Subheading 2915.60.

Delete and substitute :

"2915.60 -- *n*-Butanoic (*n*-butyric) acid, *n*-pentanoic (*n*-valeric) acid, [isomers thereof,] their salts and esters".

OR

[Page 383. Subheadings 2905.15 et 2905.16.

Delete and substitute :

"2905.15 -- **Pentanol**
2905.16 -- **Octanol**".]

Heading 2933.40.

Delete and substitute :

"2933.40 -- **Compounds containing [in the structure] a quinoline ou isoquinoline ring-system (whether or not hydrogenated), not further fused**".

Heading 2934.20.

Delete and substitute :

"2934.20 -- **Compounds containing [in the structure] a benzothiazole ring-system (whether or not hydrogenated), not further fused**".

N° 2934.30.

Nouvelle rédaction :

"2934.30 -- **Composés [dont la structure comporte des] [comportant une structure à] cycles phénothiazine (hydrogénés ou non) sans autres condensations".**

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Heading 2934.30.

Delete and substitute :

“2934.30 -- **Compounds containing [in the structure] a phenothiazine ring-system (whether or not hydrogenated), not further fused**”.
