



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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NC0671E1

O. Eng.

Brussels, 29 April 2003.

MATTERS FOR DECISION BY THE HARMONIZED SYSTEM COMMITTEE

(Item VI.2 on Agenda)

Reference document :

NR0400E1 (RSC/26 – Report)

1. The Committee is invited to examine the following conclusions reached by the HS Review Sub-Committee at its 27th Session in March/April 2003.

Annex B/1 - Decisions taken by the Harmonized System Committee at its 30th Session affecting the work of the Review Sub-Committee

2. The Chairperson briefly summarised the decisions taken by the HSC at its 30th Session and the pending questions affecting the work of the RSC.

3. **The Committee is invited to take note.**

Annex B/2 - Possible deletion of headings/subheadings with a small volume of trade (Comments by the Norwegian Administration and the International Nickel Study Group)

4. Some delegates indicated that they were still in the process of consultation with industry and related agencies. Some delegates observed that, on the basis of more recent data, the volume of trade for certain headings or subheadings might be higher than that shown in Doc. NR0270E1 (RSC/26). Nonetheless, all delegates who spoke indicated that they would submit their observations as soon as possible.
5. The Director informed the Sub-Committee that Doc. NR0365E1 was basically an information document. For the next meeting, during which decisions should be taken with respect to the headings or subheadings to be deleted, the Secretariat would hopefully be able to provide data including the year 2001.

6. The Chairperson invited administrations to provide their comments as soon as possible.

7. **The Committee is invited to take note.**

Annexes C/1 and G - Consideration of the work of the 1st Session of the Working Group

8. The Chairperson noted that the discussions at the 1st Session had been based on Doc. NR0334E1 which provided a synthesis of the proposals made by the EC, Japan, the United States and the Secretariat with regard to the information technology products provided for in Chapters 84, 85 and 90 of the HS Nomenclature. Although the structure for the amendments was different in each of the proposals, the Chairperson noted that the discussions of the various proposals had revealed that there was a growing consensus on amendments for certain categories of goods. He concluded that, despite the substantial amount of work that remained, there was a desire to complete amendments in this area for purposes of the current review cycle.

9. The Director reminded the Sub-Committee that the review by the RSC must be completed by its meeting in the Spring of 2004 in order to present the proposed amendments to the Committee and to the Council in June 2004. In view of this, he stated that certain issues needed to be discussed at this session. He was of the view that it was time to clarify the proposals and to look to appropriate solutions. In order to move forward, the Director stated that the Sub-Committee would have to discuss whether additional meetings of the Working Group or, perhaps, informal meetings of the administrations that had proposed the amendments should be held. He indicated that it would be essential for the RSC to finalise the proposals before submitting them to the Committee. Finally, the Director stated that the Sub-Committee needed to establish a cut-off date for new proposals for the review cycle. If the implementation date for the amendments remains 2007, he suggested that May 2003 should be the cut-off date because of the substantial number of outstanding items currently on the RSC agenda.

10. Delegates were in agreement that progress must be made by September and that informal intersessional meetings among the proponents of the amendments would be necessary and welcome. Delegates agreed that there was a need for change in order to serve the concerns of industry, trade, the administrations and the WCO. Delegates also indicated that, in principle, they wanted to pursue this goal within the time frame for the current review cycle. In order to do this, consensus must be reached by the principal proponents of the amendments, both as to the approach and on the specific texts for the amendments.

11. The Sub-Committee agreed that the use of small, informal groups, together with the assistance of the Secretariat in providing documents and venues, if necessary, was necessary and advisable. As one delegate noted, the complexity of the information technology sector did not lend itself to a large meeting, whether formal or informal. Therefore, the initial progress toward consensus would have to come from those administrations that had submitted the major proposals for amendments. The Delegates of the EC, Japan and the United States indicated that they were committed to seeking a common approach, hopefully by May of this year, and that they fully intended to listen, consider compromises, and make changes in their proposals, where possible, in order to build consensus.

12. Finally, the Sub-Committee agreed that the cut-off date for new submissions for the current review cycle should be June 30, 2003.

13. **The Committee is invited to take note and to approve the cut-off date of June 30, 2003 for new submissions during this review cycle.**

Annexes C/2 and F/2 - Possible amendments to the Nomenclature regarding the classification of waffles

14. The **EC** Delegate pointed out that the existing Explanatory Note to heading 19.05 specified a 10 percent water content limit, and after having introduced the comments from **CAOBISCO**, confirmed that he was in favour of the 10 percent demarcation line. However, he could also accept the status quo – entailing no split of present subheading 1905.30.

15. The **US** Delegate could not find any justification for the proposed 10 percent limit proposed by **CAOBISCO**. A 10 percent limit would create an “overlap”, resulting in the classification of waffles in two different subheadings. The **US** Delegate also questioned the proposed 20 percent limit. He was aware that the intention of this proposal was to distinguish between frozen waffles and other waffles, but wondered whether there was enough trade in frozen waffles to justify the proposed subheadings.

16. The Director expressed the view that the non-paper from **CAOBISCO** had shifted the nature of the discussion from using the proposed water content criterion to distinguish between frozen and other waffles to distinguish between waffles and wafers. He felt that administrations would need more time to consider this new proposal and suggested that the Sub-Committee return to this question at its next session after administrations had had the opportunity to consult their industries.

17. After further discussion the Sub-Committee finally agreed to put both the 10% and 20% (by weight) criteria in square brackets in order to give administrations time to once more consult their industries, and to see whether any of the proposed water content limits worked to distinguish significant product groupings.

18. **The Committee is invited to take note.**

Annexes C/3 and F/1 - Possible amendments to the Nomenclature regarding the classification of sauces

19. The **EC** Delegate emphasised that the **EC** was not searching for a legal definition of sauces. However, in order to decide whether a product should be classified as fruit or vegetables presented or prepared in a sauce (Chapter 20) - or as a sauce (containing pieces of fruit or vegetables) of heading 21.03, some legal certainty was needed in order to facilitate trade. He underscored that the **EC** proposal was based on the existing Explanatory Note to heading 21.03, and that the only difference was the introduction of the 40% limit on fruits and vegetables.

20. Another delegate was clearly opposed to the idea of creating a legal Note for sauces. In his mind it was important to realise that different cultures saw sauces in different ways, and that it was not necessary to create legal definitions for every agricultural product in the HS Nomenclature. Imposing legal limits on the scope of sauces would also be contrary to the views of industry. A third delegate supported this view. He was not in favour of a

quantitative criterion and, in addition, pointed out that the term “normally” in the proposed definition would create a loophole which could be challenged in the courts.

21. The **EC** Delegate reminded the Sub-Committee that administrations had been invited to submit new ideas in order to make progress on this issue. He was therefore prepared to raise the proposed numerical limit from 40% to 45% in order to reach consensus.
22. After further discussion, the Sub-Committee finally agreed to place this new proposal in square brackets (with the "45%" criterion also in square brackets) and to send it to the HS Committee for final decision. The texts placed in square brackets are reproduced in Annex F/1 to the RSC/27 Report.
23. **The Committee is invited to rule on whether or not a proposed definition for “sauces” should include a reference to a criterion based on a “percentage of visible pieces” and, if so, whether or not the percentage should be 45% of the preparation’s weight.**

Annexes C/4 and F/3 - Proposal by the **US** Administration to amend the Nomenclature and Explanatory Note to heading 38.21

24. The Review Sub-Committee approved the draft text recommended by the Scientific Sub-Committee without modification. The Sub-Committee also instructed the Secretariat to prepare draft amendments to the Explanatory Notes for examination at its next session, on the basis of the recommendation made by Scientific Sub-Committee, as mentioned in paragraph 19 of Doc. NR0343E1.
25. The Secretariat is of the opinion that the new wording of this text does not entail any transfer of goods.
26. **The Committee is invited to provisionally adopt the text approved by the Sub-Committee. The Committee is also invited to take note of the Sub-Committee’s further study with regard to the Explanatory Notes.**

Annex C/5 - Possible amendment of the structured nomenclature to heading 39.20 to provide for banknote substrates of plastics (Proposal by the **Australian** Administration)

27. At the request of the **Australian** Administration, the Sub-Committee agreed to delete this item from its Agenda.
28. **The Committee is invited to take note.**

Annexes C/6 and F/4 - Possible amendments to the Explanatory Notes to Chapter 41

1. The **US** Delegate, while expressing support for the proposed amendments, suggested that the reference to “reversible light tanning” in Part (I) be replaced by “reversible tanning” for the sake of consistency with the terminology used in Note 2 (A) to Chapter 41. The reference to “physical strength” could also be deleted from Part (II) as, according to the industry, tanning did not enhance the physical strength of the resultant leather. With respect to the expression “and will not denature at 100 °C”, he found it difficult to indicate a precise temperature threshold at which fully tanned hides and skins would not denature. He, therefore, suggested that this expression be removed from the last sentence of the proposed new text of the first paragraph in Part (II). The **Canadian** Delegate concurred with the view

expressed by the **US** Delegate. Moreover, he suggested deleting the whole last sentence of the proposed new text in part (II), since there was no definition of the term "resistance".

30. The **EC** Delegate, on the other hand, questioned the purpose of the proposed amendments. Although the proposal was basically a redraft of the current texts, he had noted that it contained terminology which was not used in Note 2 to Chapter 41. He considered that the *status quo* would, therefore, be a better option. Besides the fact that the Committee had not accepted an amendment to the legal text, pretanning was not excluded from headings 41.04 to 41.06. Moreover, in some countries "pretanning" was also called "tanning". The only criterion to be applied when considering the scope of headings 41.01 to 41.03 on the one hand, and headings 41.04 to 41.06, on the other, was the irreversibility criterion. In his view, there was no need to delete a description of processes prior to tanning from Part (II) and to include this text in Part (I) since there was no actual change to the present wording of this description. He was also against the idea of replacing a reference to "light tanning" by a reference to "reversible tanning" as the latter would repeat the wording of Note 2 (A).
31. Taking into account the lack of consensus on this issue, the Sub-Committee decided to submit two options to the Harmonized System Committee for decision; Option 1 being to maintain the *status quo* and Option 2 being to amend the General Explanatory Notes to Chapter 41 as proposed by the Secretariat, subject to the modifications proposed by the Delegates of the **United States** and **Canada**, as well as to certain corrections with regard to the French text. The texts with regard to Option 2, which were placed in square brackets, are set out in Annex F/4 to the RSC/27 Report.
32. **The Committee is invited to rule on whether to retain the *status quo* or to adopt the General Explanatory Notes to Chapter 41 as set out in Annex F/4 to the RSC/27 Report.**
- Annexes C/7 and F/5 - Possible amendment of the Explanatory Notes to headings 61.03 and 61.04
33. The Sub-Committee unanimously accepted the proposed amendments to the French text of the Explanatory Note to heading 61.03.
34. With regard to the Explanatory Note to heading 61.04, the Sub-Committee agreed to accept Option 1, subject to inserting the expression "women's or girls" before "suit" in the first sentence of the proposed new second paragraph of the English version, in order to improve the clarity of the text.
35. In terms of the possible amendment to Note 3 (a) to Chapter 61, proposed only for the French version and in the sole interests of aligning both versions, the Sub-Committee decided to retain this proposal in square brackets for examination by the HS Committee at its next session.
36. The Secretariat is of the opinion that the new wording of the text set out in square brackets does not entail any transfer of goods.
37. **The Committee is invited to adopt the amendments to the Explanatory Notes to headings 61.03 and 61.04 and to rule on whether to provisionally adopt the texts set out in square brackets in Annex F/5 to the RSC/27 Report.**

Annexes C/8 - Possible amendments to the Explanatory Notes to correct certain texts and to align the English and French versions

38. The Chairperson, noting that there was no consensus that the Explanatory Notes should be amended, concluded that the Sub-Committee had finished its discussion of this matter without making a recommendation for amendments.

39. **The Committee is invited to take note.**

Annexes C/9 and F/6 - Possible alignment of the French and English texts of Note 9 to Chapter 71 (Proposal by the EC)

40. The EC Delegate introduced this question by stating that, as already pointed out, there was not a problem of a lack of alignment between the two versions of the text, but rather a presentation problem. This could result in misclassification by administrations using working languages other than those of the Harmonized System. He could also agree with the alternative text proposed by the United States in Doc. NC0348E1, which also allayed his concerns.

41. The Sub-Committee finally unanimously approved the alternative texts proposed by the United States as the new aligned text for Note 9 to Chapter 71.

42. The Secretariat is of the opinion that the new wording of this text does not entail any transfer of goods.

43. **The Committee is invited to provisionally adopt the texts approved by the Sub-Committee.**

Annexes C/10 and F/7 - Possible amendments to the structured nomenclature to headings 73.04 and 73.06 (Proposal by the EC)

44. One delegate initiated the discussion of this agenda item by expressing his preference for Canada's alternative text, which clearly distinguished products of steel other than stainless steel from those made of stainless steel. Another delegate expressed support for the Canadian alternative. He considered that it would be preferable in terms of ensuring the continuity of statistics.

45. The Sub-Committee agreed to accept the Canadian text in its entirety for the structure of heading 73.04. On the subject of the order of presentation, the Sub-Committee agreed to leave it to the Committee to decide on this matter on the basis of trade data, to be provided by the Secretariat and/or administrations during the intersession.

46. Where heading 73.06 was concerned, several delegates indicated that they preferred the Canadian alternative, subject to the following amendments : (1) insertion of two new subheadings, namely 7306.12 and 7306.22, to give separate status to stainless steel products (welded, other), and (2) amendment of the text of subheading 7306.6, to read "Other, welded, of non-circular cross-section", with the word "welded" being deleted from subheadings 7306.61 and 69 as a consequence. After deciding to make these amendments, the Sub-Committee agreed to accept the Canadian alternative proposal, as amended, for the structure of heading 73.06.

47. The Secretariat is of the opinion that the new wording of the texts does not entail any transfer of goods. The new wording of the structured nomenclature creates specific two-dash subheadings within the scope of present one-dash subheadings in order to distinguish between stainless steel and other steel line pipe of a kind used for oil or gas pipelines, and between stainless steel and other steel casing, tubing and drill pipe of a kind used in drilling for oil or gas.
48. **The Committee is invited to rule on whether the order of presentation should refer to products of stainless steel and then to products other than stainless steel, and, subject to its decision on the order of presentation, the Committee is invited to provisionally adopt the texts approved by the Sub-Committee.**

Annexes C/11 and F/8 - Proposal by the US Administration to merge headings 95.01 to 95.03 into a single heading for toys

New heading 95.03

49. The Sub-Committee unanimously adopted the text proposed at Annex B/1 to Doc. NR0351E1, subject to the following amendments : (1) deletion of the words “designed to be ridden by children”, (2) deletion of the words “not elsewhere specified or included” and (3) maintenance of the word “recreational”.

New Note to Chapter 95

50. The US Delegate, supported by the Delegates of Canada and Switzerland, supported the draft Note in its entirety as reproduced at Annex B/1 to Doc. NR0351E1; the aim of the Note being to give legal status to the provisions of existing Explanatory Note to heading 95.03 without affecting the GIRs, so as to provide more certainty in respect of the classification of toys in the new merged heading. He recalled that the new Note comprised three paragraphs, each dealing with a particular situation, namely : (a) toys which constituted articles in general use (musical instruments, sewing machines, etc.), but were identifiable as toys because of their size or limited capacity, (b) sets of instructional toys which were classified as toys even if they consisted of articles which, by their nature or given the size or specific nature of their components grouped together, were not toys (for example, chemistry sets, sewing sets), and (c) toys which were sold with a promotional article of low value, and which could not be classified as sets put up for retail sale within the meaning of GIR 3 (b).
51. This view was not shared by the EC Delegate who, leaving aside the question of paragraph (c) concerning articles of minor importance which might, for promotional purposes, be sold with a toy, put forward the following arguments : (1) the use, in the introductory phrase of this Note, of the qualifier “*inter alia*” which generally preceded a non-exhaustive list, could be a source of confusion, (2) paragraph (a), which in his view did no more than state an obvious point already covered by the Explanatory Notes, (3) paragraph (b) presented a typical case calling for the application of GIR 3 (b), and (4) only the case dealt with by paragraph (c), concerning toys sold with an article of minor importance for promotional or advertising purposes, and not constituting a set within the meaning of GIR 3 (b), warranted retention.
52. Although there was some convergence of views concerning the products referred to in paragraph (c) of the new Note, opinions remained mixed where the adoption of paragraphs (a) and (b) was concerned. In these circumstances, the Sub-Committee agreed (1) to maintain these two paragraphs in square brackets, for further discussion at the next session, and (2) to improve the drafting of paragraph (c) of this Note by deleting the words “of minor importance”, placed in square brackets, stating clearly that the articles presented together in this case did not constitute a set within the meaning of GIR 3 (b), and selecting some more appropriate examples.
53. The Sub-Committee agreed that only the text of the new merged heading adopted in the course of the discussions would be submitted to the HS Committee for consideration; as indicated above, the examination of the draft new Note would continue at the Sub-Committee’s next session.

54. The Secretariat is of the opinion that the new wording of this text combines the goods of present headings 95.01, 95.02 and 95.03 into one heading, and does not entail any other transfer of goods.

55. **The Committee is invited to provisionally adopt the text of the new heading 95.03 approved by the Sub-Committee, and is also invited to take note of the Sub-Committee's decision to continue its consideration of the proposed Note to Chapter 95.**

Annex C/12 - Possible amendment of the structured nomenclature to heading 29.41 and the Explanatory Notes to Chapter 29 (Proposal by the Mexican Administration)

56. The Sub-Committee, while recognising the sensitivity and highly technical nature of the issue, agreed to pursue this matter at its next session in September 2003.

57. **The Committee is invited to take note.**

Annex C/13 - Possible amendments to the structured nomenclature to heading 38.24 (Proposal by UNEP)

58. Taking into account the fact that the Canadian Administration had indicated that it would formally submit a proposal to regroup all products covered by the Montreal Protocol and the Rotterdam Convention under one heading in the Nomenclature, the Sub-Committee agreed to postpone the discussion of this agenda item to its next session in September 2003.

59. **The Committee is invited to take note.**

Annex C/14 - Possible creation of a new Note to Chapter 69 to define the term "refractory" (Proposal by the Australian Administration)

60. The Delegate of Australia explained his administration's proposal by stressing the importance of having a legal Note in order to solve problems relating to the interpretation and application of the Nomenclature encountered by the private sector with respect to the refractoriness criterion of 1,500° C set out in the Explanatory Notes, which were, of course, not legally binding.

61. The EC Delegate stated that the discussion within the Scientific Sub-Committee, as well as with all the trade circles consulted, had demonstrated the need to maintain the *status quo*, since the temperature of use was not a property sufficiently well defined to determine refractoriness, it rather being the softening behaviour inherent in these products under specific conditions.

62. The Review Sub-Committee unanimously agreed not to recommend the creation of a new legal Note to Chapter 69 to define the term "refractory".

63. **The Committee is invited to take note.**

Annex C/15 - Possible amendments to the Nomenclature and the Explanatory Notes regarding the classification of controller units for anti-lock braking systems (ABS) (Proposal by the Australian Administration)

64. The Delegate of **Australia** opened the discussion of this agenda item by reiterating his administration's belief that, notwithstanding the fact that controller units for anti-lock braking systems (ABS) were more specifically described as control units of heading 90.32, such a classification was problematic. The ABS controller unit was clearly a part of a motor vehicle and should be classified accordingly in heading 87.08.
65. Other delegates were concerned about the idea of moving only one control system to heading 87.08 and not other control systems for motor vehicles. Furthermore, classification in heading 87.08 was not warranted since the ABS controller unit could be classified in heading 90.32 by application of GIR 1. They felt that the proposal to transfer ABS controller units to heading 87.08 could be part of a broadened proposal that could be examined during the next Review Cycle.
66. The Chairperson concluded the discussion of this agenda item by expressing the view that there was no consensus in the Sub-Committee at this time for pursuing the individual transfer of products, such as ABS controller units, from heading 90.32 to Chapter 87.
67. **The Committee is invited to take note.**

Annex C/16 - Possible amendments to the structured nomenclature to heading 90.30 (Proposal by the US Administration)

68. Several delegates began the discussion on this agenda item by expressing support for the **US** proposal. In their view, the proposal would result in a transfer of products from a residual subheading to a more specific subheading, thereby improving the usefulness and detail of trade data. There was also support for the **US** view that the current text placed an undue burden on Customs officers. Finally, it was felt that it was important to identify products by their function and not on the basis of the presence or absence of a recording device.
69. Other delegates were in favour of the *status quo*. One delegate informed the Sub-Committee that his administration felt that maintaining subheadings 9030.3 and 9030.83 was important for developing countries. Another delegate referred to Doc. NR0290E1, which contained trade data supporting the importance of these devices in trade. Considering the trade volume, he could see no reason for deleting those subheadings. There was neither a problem of overlap with other subheadings nor the necessity of having an elaborate inspection regime that would justify the decision to delete them.
70. The **US** Delegate informed the Sub-Committee that the purpose of his administration's proposal was to have goods of the same type provided for in one subheading. This would result in more meaningful data because it would group products by function in one subheading.
71. The Sub-Committee concluded its discussion with the **US** Delegate indicating that his administration would submit an alternative proposal to the Secretariat for the Sub-Committee's next session in September.

72. **The Committee is invited to take note.**

Annexes D/1 and F/9 - Possible amendment of subheading 0406.40 to cover “blue-veined” and similar cheeses

73. The **EC** Delegate informed the Sub-Committee that he agreed with the Secretariat’s proposal in Doc. NR0352E1 to insert a new Subheading Note in Chapter 4 defining “blue-veined cheese”/“fromages à pâte persillée”. He had been in touch both with the French industry and the English industry which had agreed to the proposal as long as the subheading texts themselves were not changed.

74. The **US** Delegate, however, did not agree with the Secretariat’s proposal. He was of the view that the subheading texts themselves needed to be amended. He had never seen a reference to “blue-veined” cheese on a product or on an invoice. “Blue cheese” was the expression normally used in trade. The **US** Delegate also apologised for not having had the time to submit an official proposal. However, he promised to forward an official proposal from his administration in sufficient time for the Sub-Committee’s next meeting in September.

75. The Sub-Committee agreed to re-examine this issue at its next session based on the Secretariat proposal as set out in Doc. NR0352E1 and the **US** proposal to be submitted shortly. The Secretariat proposal, which was placed in square brackets, is set out in Annex F/9 to the RSC/27 Report.

76. **The Committee is invited to take note.**

Annex D/2 - Possible amendment of the Explanatory Notes to clarify the classification of sheet-fed presses (Proposal by the Japanese Administration)

77. The Delegate of **Japan** referred to the present Explanatory Note to heading 84.43 on page 1508, wherein the last part of present Item (C) explained two different methods used by rotary presses to deliver paper. **Japan** had proposed to identify those two kinds of paper delivery methods separately by creating new items (1), i.e., for reel-fed presses and (2), for sheet-fed presses, under present part (C) on page 1508, in order to clarify the printing mechanism of rotary presses.

78. One delegate agreed with the Secretariat that this proposal should be submitted to the Harmonized System Committee for consideration under the Corrigendum procedure, on the basis of a precise description of the machine(s) which the **Japanese** Administration was trying to cover by this proposed amendment.

79. The Sub-Committee concluded its discussions on this agenda item by agreeing that the issue was, in the first instance, one for the HS Committee to consider on the basis of a revised proposal to be submitted to the Secretariat by the **Japanese** Administration based on the 2002 version of the Explanatory Notes. In addition, **Japan** was requested to submit technical literature on the type of machines it wished to cover by its proposal.

80. **The Committee is invited to take note that this question will be considered under Agenda Item IX.8 (NC0721E1).**

Annex D/3 - Possible amendment of heading 84.22 with regard to the use of the terms “packing” and “packaging”

81. Several delegates stated that the use of the terms “packing” and “packaging” in the current text of heading 84.22 did not present a problem with regard to the scope or interpretation of the Nomenclature. The Sub-Committee, therefore, agreed, by consensus, that no change to the Nomenclature or the Explanatory Notes was required in connection with this issue.

82. **The Committee is invited to take note.**

Annexes D/4 and F/12 - Amendments to the Nomenclature and to the Explanatory Notes to correct certain texts

83. The Sub-Committee unanimously approved the amendments proposed by the Secretariat in the Annex to Doc. NR0369B1, without modification. The texts approved by the Sub-Committee are reproduced in Annex F/12 to the RSC/27 Report.

84. The Secretariat is of the opinion that these changes to the texts do not entail any transfer of goods.

85. **The Committee is invited to provisionally adopt the texts approved by the Sub-Committee.**

Annexes D/5 and F/13 - Proposal by the Canadian Administration to create a new Subheading Note to Chapter 39 with regard to multi-layered sheets of plastics

86. At the request of the Canadian Delegate, the Sub-Committee agreed to undertake a preliminary discussion on the proposed new Subheading Note to Chapter 39. The Canadian Delegate indicated that his administration would shortly submit its written responses to the questions put forward by the Secretariat in Doc. NR0370E1. He invited other delegations to provide their views in this connection to his administration, with a view to addressing them in the Canadian submission. Pending these further discussions, the proposed amendment to Chapter 39 was placed in square brackets.

87. **The Committee is invited to take note.**

Annexes D/6 and F/14 - Proposal by the EC to create new subheadings for bluefin tuna in heading 03.01 and swordfish and toothfish in headings 03.02, 03.03 and 03.04

88. The EC Delegate opened the discussion of this agenda item by pointing out that the purpose of the EC proposal was to provide a small number of subheadings for certain species of fish of interest to FAO, CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources) and other international organisations devoted to monitoring and controlling illegal fishing of these species. The US Delegate also supported the EC proposal. However, he was not entirely in favour of the proposed subheading texts and numbering set out in the Annex to Doc. NR0374E1. In heading 03.01 (subheading 0301.94) he questioned whether “Southern bluefin tunas (*Thunnus maccoyii*)” should be included and, if so, in his opinion the taxonomic reference (*Thunnus thynnus*) could be deleted. He also questioned whether swordfish and toothfish should be combined in proposed subheading 0303.70.

89. The **EC** Delegate informed the Sub-Committee that he would get in touch with the international organisations involved to see whether they wanted other tunas than “Bluefin tunas” to be mentioned in heading 03.01, and whether they wanted to split swordfish and toothfish in heading 03.03.
90. In view of the above, the Sub-Committee agreed to place proposed subheadings 0301.94 and 0303.70 in square brackets and ask the HS Committee to take a decision on this proposal at its May 2003 Session. The texts approved and those placed in square brackets are set out in Annex F/14 to the RSC/27 Report.
91. The Secretariat is of the opinion that the new subheadings 0301.94, 0302.67, 0302.68 and 0303.70 will transfer goods from the present residual subheadings, and that the new two-dash subheadings in heading 03.04 will merely create specific references to goods within the present one-dash subheadings. The new wording of these texts does not entail any other transfer of goods.
92. **The Committee is invited to rule on the subheadings in square brackets and, in accordance with its decision, is invited to provisionally adopt the texts approved by the Sub-Committee.**

Annexes D/7 and F/15 - Possible amendment of the Nomenclature to Chapter 44 (Proposal by the **EC**)

93. At the request of the Delegate of **Canada**, the Sub-Committee agreed to undertake a preliminary discussion only. The proposals were, therefore, placed in square brackets.

Structured nomenclature to heading 44.07

94. The **US** and **Canadian** Delegates indicated that the creation or deletion of subheadings should take into account world-wide trade in these products and not only regional trade. Statistical data would be necessary to see whether or not the international trade in question was world-wide or regional. Both delegates indicated that they had not yet received feedback on the proposals from their industry and other interested government agencies.

Heading 44.09

95. With respect to heading 44.09, the **EC** Delegate indicated that he could accept the Secretariat’s proposal in paragraph 6 of the working document. Noting that the proposal for this heading was closely linked to the creation of heading 44.22, one delegate expressed his concern as to whether the distinction between the products of that new heading, on the one hand, and those remaining in heading 44.09, on the other, would be sufficiently clear.

Heading 44.10 and structured nomenclature to heading 44.10

96. The **EC** Delegate argued that oriented strand board (OSB) should be considered and treated to be a distinct type of board, which differed from particle board. The Director invited the proponent and other interested parties to provide information on how to distinguish between particle board (of proposed subheading 4410.22) on the one hand and “similar board” (of proposed subheading 4410.29) on the other. It was agreed that the **EC** proposal and the Secretariat’s alternative should be reproduced in the report.

Structured nomenclature to heading 44.11

97. One delegate informed the Sub-Committee that he had not received a clear description with a view to identifying these boards. He said that he would endeavour to submit comments to that effect in due time. The EC Delegate indicated that he could accept the rewording of the second one-dash subheading, as suggested by the Secretariat in paragraph 14 of the working document.

Structured nomenclature to heading 44.12

98. The EC Delegate informed the Sub-Committee that it was based on proposals from the industry, which considered the current structure to no longer be relevant, and that he would submit statistical information in support of this proposal to the Secretariat in due time.

Heading 44.18 and the structured nomenclature to heading 44.18

99. Referring to the Secretariat's suggestion to reword the proposed amendment of heading 44.18, the EC Delegate stated that he could accept that suggestion. With respect to the proposed new subheading, he indicated that he would endeavour to find the answers to the questions posed by the Secretariat in paragraph 20 of the working document.

Heading 44.22 and the structured nomenclature to heading 44.22

100. The EC Delegate informed the Sub-Committee that parquet panels were produced by a special industry. That being the case and taking into account the high volume of international trade in these panels, a separate heading covering such panels would be justified. He could agree with the Secretariat's suggestion to insert a reference to "wood" in the heading text, and could also accept, in principle, an amendment to Note 3 to Chapter 44 with a view to including parquet panels, etc. of particle board or similar board, fibreboard, laminated wood or densified wood.

101. The texts placed in square brackets are reproduced in Annex F/15 to the RSC/27 Report.

102. **The Committee is invited to take note.**

Annex D/8 - Possible amendment of Note 7 (c) to Section XI (Proposal by the EC)

103. The EC Delegate informed the Sub-Committee that the EC had classified a square, polyester "wiper" as a made up article of heading 63.07, because its edges were "heat-sealed". Although Note 7 (c) to Section XI did not refer specifically to "heat-sealing" as one of the processes conferring the character of "made up" on an article, he suggested that heat-sealing could be regarded as a modern form of hemming, which clearly caused an article to be made up. He therefore proposed that the term "heat-sealed" be inserted in Note 7 (c) for the sake of clarification.

104. The US Delegate expressed the view that a product which had been cut with a hot knife or scissors in order to prevent fraying, this being a simple means of securing the edges, could not be regarded as made up within the meaning of Note 7 (c) to Section XI; therefore the legal Note should not be amended along the lines proposed, even for the future. The Delegate of Canada also stated that he was not in favour of the EC proposal, as an

amendment of this kind might have repercussions for the classification of various products of Section XI, including in particular the narrow fabrics of heading 58.06.

105. The Sub-Committee recognised that there were two questions before it, namely the specific classification issue raised by the **EC**, and a possible amendment to Note 7 to Section XI in the framework of the 2007 version of the Harmonized System; the first step would be to deal with the classification problem raised by the **EC**.
106. The Sub-Committee therefore agreed to submit the classification of this product to the Harmonized System Committee for decision, on the basis of a sample and additional technical information about the product, which the **EC** was invited to submit. The Secretariat would prepare a working document containing this information for examination by the Committee, which would also be requested to rule on the interpretation to be given to Note 7(c) to Section XI and on the advisability of amending that Note.
107. **The Committee is invited to take note that the classification of the textile product in question will be considered under Agenda Item IX.9 (Doc. NC0724E1).**
- Annexes D/9 and F/17 - Revision of Chapters 54 and 55 (Proposal by the **EC**)
108. As this was a preliminary discussion, the **EC** Delegate explained that the amendments proposed for Chapters 54 and 55 were aimed primarily at modernising the HS Nomenclature. Essentially, their purpose was to give separate status to aramids within the high tenacity yarn of heading 54.02 and the staple fibres of heading 55.03, as well as to polypropylene and elastomeric yarn within headings 54.02 and 54.04, and to synthetic filament tow of polypropylene in heading 55.01. There were mixed opinions about the creation of these new subheadings, and several delegates asked for more time to consider the proposals and consult industry before taking any decision.
109. The Sub-Committee agreed to place the entire proposal in square brackets and invited administrations to consult industry. It would return to this question at its next session, on the basis of the comments made during the discussions and any additional information which might be submitted.
110. **The Committee is invited to take note.**
- Annexes D/10 and F/18 - Possible amendments to the Nomenclature and Explanatory Note to heading 61.15 (Proposal by the **EC**)
111. The Delegate of **Canada** pointed out that the compression at ankle accepted by his administration for the compression hosiery at issue was 20 mm Hg instead of 15 mm Hg. The **US** Delegate stressed that those products were covered by a **US** national subheading, but were probably listed under a different name in this tariff schedule.
112. Following this discussion, the Sub-Committee agreed to place the **EC** proposal in square brackets and to return to this question at its next session, on the basis of the comments made during the meeting and any additional information submitted by administrations.
113. **The Committee is invited to take note.**

Annexes D/11 and F/24 - Possible amendments to headings 85.35 and 85.36 (Proposal by the EC)

114. The EC Delegate, while explaining the purpose of the proposal, said that he could also accept the Secretariat's alternative texts proposed in Annex II of the working document. The Swiss Delegate could accept the reference to "connectors" in heading 85.35 and in the first part of heading 85.36, considered that the connectors for optical fibres, optical fibre bundles or optical fibre cables, were accessories to commodities classified in Chapter 90, and that they should remain classified in that heading.

115. The Chairperson concluded that there was consensus on the proposal to insert a reference to "connectors" in heading 85.35 and in the first part of heading 85.36. The other proposals, which were placed in square brackets, would be further discussed at the Sub-Committee's next session, on the basis of the Secretariat's alternative text proposal and taking into account any information which might be received from administrations.

116. **The Committee is invited to take note.**

Annexes D/12 and F/25 - Possible creation of a new heading for semiconductor and flat panel display manufacturing equipment (Proposals by the United States and the EC)

117. The Sub-Committee held a preliminary discussion on the US and EC proposals, while other delegations indicated that they had not yet completed their consultations with industry and other agencies.

118. With respect to the classification of parts and accessories, the EC Delegate pointed out that no provisions had been made for these commodities in the EC proposal, pending the outcome of the discussion on the proposals for Chapters 84, 85 and 90, which also provided for an amendment of Note 2 to Section XVI.

119. The US Delegate informed the Sub-Committee that the US proposal to include parts (and accessories) of ceramics and of glass would take into account the fact that a number of specific parts and accessories for the machines at issue were made of these materials.

120. Concerning the proposed priority for classification in new heading 84.85, the EC Delegate clarified that a Section Note would be preferable to a Chapter Note, thus ensuring that a potential classification in Chapter 85 would also be included in this provision.

121. The EC Delegate agreed with the Secretariat that any amendment to Note 5 to Chapter 85 might influence the scope of new heading 84.85.

122. The US Delegate was of the view that machines for inspection, measuring and checking, should continue to be classified in Chapter 90, possibly in a separate heading, since they could be used for the inspection, measuring and checking of other products as well.

123. The Chairperson concluded that the proposals should be re-addressed at the Sub-Committee's next session, on the basis of further information to be provided by the interested parties. Pending those discussions, the texts would be placed in square brackets.

124. **The Committee is invited to take note.**

Annex D/13 - Possible amendment of heading 28.23 with regard to titanium dioxide
(Proposal by the EC)

125. The EC Delegate noted that titanium dioxide was not specifically mentioned in the text of heading 28.23, despite the fact that it was almost the only commodity of that heading which was of any significance in trade. About 90 % of its world production was used for making pigments.
126. He agreed with the Secretariat's comments in paragraphs 16 to 18 of Doc. NR0388E1 and preferred the insertion of a concentration limit for substances by which titanium dioxide could be treated in the text of heading 28.23, rather than to use the expression "very small amounts", which could be difficult to interpret.
127. Certain other delegates supported the proposal, in principle, and were also in favour of an amendment at legal level. They expressed the wish to continue to study the matter during the intersession and to consult with industry and their technical services, especially with regard to the proposed concentration limit for calcination salts, their function in the product and to whether the expression "whether or not" should be inserted before the word "treated" in the new text of heading 28.23.
128. The Director explained that in order to achieve the stated objective of clarifying the scope of heading 28.23, the Secretariat had a preference to create a new legal Note and could prepare a draft during the intersession. At the same time, as an interim measure, an Explanatory Notes amendment could be put forward by corrigendum. In view of the technical nature of the matter and the fact that the Scientific Sub-Committee would not meet before January 2004, the Sub-Committee should re-examine this issue at its next session and decide at that time whether to obtain the views of the Scientific Sub-Committee with regard to technical aspects of the issue. The Sub-Committee agreed with this approach.
129. **The Committee is invited to take note.**
- Annexes D/14, F/19 and F20 - Possible amendments to Subheading 8543.30 and the Explanatory Note to heading 85.43 to align the French texts on the English texts
130. The Sub-Committee agreed unanimously with the proposals to amend the text of subheading 8543.30 to align the French on the English.
131. Concerning the amendment to the Explanatory Note to heading 85.43, one delegate suggested that the amendment could be implemented under the Article 8 procedure. The Sub-Committee unanimously agreed.
132. The Secretariat is of the opinion that the new wording of this text does not entail any transfer of goods.
133. **The Committee is invited to provisionally adopt the texts approved by the Sub-Committee as set out in Annex F/19, and is also invited to adopt the texts approved by the Sub-Committee as set out in Annex F/20 to the RSC/27 Report.**

Annexes D/15 and F/21 - Possible deletion of subheadings 0105.92 and 0105.93 (Proposal by the EC)

134. The EC Delegate explained that the intention of this proposal was to simplify the HS Nomenclature. These subheadings had been adopted at the 10th Session of the HS Committee in 1992 and, according to the EC's industrial and agricultural sectors, these subdivisions were no longer economically or commercially relevant. Another delegate pointed out that the EC proposal had been received only a short time ago, and because of that he had not yet been able to obtain any feedback from his Agriculture Department. He therefore asked for a preliminary discussion only at this session.

135. The Sub-Committee therefore agreed to place the proposed texts in square brackets and to return to this question at its next session.

136. **The Committee is invited to take note.**

Annex D/16 - Possible amendment of the Nomenclature and the Explanatory Note to heading 90.21

137. The Sub-Committee held a preliminary exchange of views on the possible amendment of the structured nomenclature and the Explanatory Note to heading 90.21.

138. The EC Delegate indicated that the objective of the proposal was (1) to supplement the legal text of heading 90.21 and subheading 9021.10 by inserting a reference to "dislocations and joint injuries", to accompany the reference to "fractures" and (2) to align the English version of the Explanatory Notes on the French, using the Corrigendum procedure provided for by Article 8 of the HS Convention. The proposed amendment to the legal text was in no way intended to broaden the scope of the heading, but would simply make it easier to understand by specifying that the appliances concerned could also be used to treat dislocations and joint injuries – a point which was, in fact, already made in the French version of the existing Explanatory Notes.

139. The Delegate of Canada was against amending the legal text, for reasons which would be made clear in the comments which his administration would be sending the Secretariat on this subject. Moreover, while he agreed with the alignment of the English and French versions of the Explanatory Notes, he considered that for the sake of simplification, the French text should be aligned on the English by deleting the reference to "luxations ou lésions articulaires".

140. The US Delegate supported the views expressed by the Delegate of Canada, emphasising that the expression "joint injuries" was ambiguous, as in its strict sense it could be understood as calling for the services of a specialist surgeon, while in general terms it could cover any kind of muscular injury, even including those which might be treated simply by applying an elastic bandage of Section XI. In his view, this meant that the French version had a broader scope, which needed to be corrected.

141. Following these discussions, the Sub-Committee agreed to deal with this issue in stages : (1) to submit the problem of the alignment of the English and French versions of the Explanatory Note to the HS Committee at its 31st Session in May, on the basis that the Explanatory Notes should be understood in such a way as not to broaden the scope of the heading text, and (2) to study the possibility of amending the legal text at the Sub-

Committee's next session in September, in the light of the outcome of the discussions held in the HS Committee in May.

142. **The Committee is invited to take note of the fact that the question of alignment will be considered under Agenda Item IX.11 (NC0729E1) and to take note of the continuing study of the possible amendment of the legal texts.**

Annexes D/17, F/10 and F/11 - Possible amendments to subheading 2529.10 and the relevant Explanatory Notes with regard to the term "felspar" (Proposal by the EC)

143. The Sub-Committee unanimously approved the amendments to subheading 2529.10 and the relevant Explanatory Notes with regard to the term "felspar", without modification. The texts approved are set out in Annexes F/10 and F/11 to the RSC/27 Report.
144. The Secretariat is of the opinion that the new wording to these texts does not entail any transfer of goods.
145. **The Committee is invited to provisionally adopt the texts approved by the Sub-Committee as set out in Annex F/10, and to adopt the texts approved by the Sub-Committee as set out in Annex F/11.**

Annex D/18 and F/16 - Possible alignment of the French and English texts of Subheading Note 1 to Chapter 16, Subheading Notes 1 and 2 to Chapter 20 and Note 3 to Chapter 21 (Proposal by the EC)

146. Many delegates were in favour of the EC proposal to align the French texts on the English texts as suggested in Doc. NR0397E1. The Delegate of Switzerland stated that it would be more appropriate to use the expression "masse nette" rather than the expression "poids net" in the proposed French texts, noting that "masse nette" was being used in Customs declaration forms in Europe.
147. One delegate pointed out that during the last review cycle a proposal to use the term "mass" instead of "weight" had been examined based on the ISO standard, but this proposal was not adopted. He explained that although the term "mass" was scientifically more accurate than "weight", in the field of Customs, as well as in trade circles, the term "weight" was more familiar than "mass". It was further pointed out that the English text of heading 35.06 referred to "a net weight" and the corresponding French text referred to "un point net", while "masse" was used in the context of "masse volumique" in the French text of heading 44.11, which corresponded to "density" in English.
148. The Committee agreed to put the expression "d'un poids net" of the proposed French texts in square brackets and asked the HS Committee to take a decision on this matter at its May 2003 Session.
149. The Secretariat is of the opinion that the new wording to these texts does not entail any transfer of goods.
150. **The Committee is invited to rule on the texts in square brackets and, in accordance with its decision, is invited to provisionally adopt the texts approved by the Sub-Committee.**

Annexes E/1 to E/10 and Annexes F/26 to F/35, respectively – Possible amendment of the Explanatory Notes to Chapters 84, 85, 87 and 90

151. The Sub-Committee continued its comprehensive review of the Explanatory Notes for Chapters 84, 85, 87 and 90. Although certain texts remained in square brackets in order to allow administrations to review information or propose alternative texts, the Sub-Committee reached substantial agreement on many of the proposals.

152. The Sub-Committee agreed to review the specific texts in square brackets at its next session in September and, at the same time, to decide whether or not to approve all the texts. The texts in square brackets are set out in Annexes F/26 to F/35 to the RSC/27 Report.

153. **The Committee is invited to take note.**

Annex E/11 - Possible amendment of the Explanatory Note to heading 29.35

154. At the request of the Canadian Administration, the Sub-Committee agreed to delete this Canadian proposal from its Agenda.

155. **The Committee is invited to take note.**

Annexes E/12 and F/23 - Possible amendment of the Explanatory Note to heading 29.37

156. The Sub-Committee unanimously approved the texts set out in the Annex to Doc. NR0371B1, subject to several editorial modifications. The texts approved are set out in Annex F/23 to the RSC/27 Report.

157. **The Committee is invited to adopt the texts approved by the Sub-Committee.**

Annexes E/13 and F/22 - Possible amendment of the Explanatory Note to heading 29.41

158. The Sub-Committee unanimously approved the texts set out in the Annex to Doc. NR0372B1, subject to several editorial modifications. The texts approved are set out in Annex F/22 to the RSC/27 Report.

159. **The Committee is invited to adopt the texts approved by the Sub-Committee.**

Annex E/14 - Possible amendment of the Explanatory Note to heading 30.02

160. On the basis of the observations of the Scientific Sub-Committee set out in Doc. NR0373E1, the Review Sub-Committee shared the view of the Scientific Sub-Committee that no amendment of the Explanatory Note to heading 30.02 was needed and agreed to maintain the *status quo*.

161. **The Committee is invited to take note.**

Annex E/15 - Possible amendment of the Explanatory Notes to headings 84.33 and 87.01 to clarify the classification of riding lawn-mowers

162. Recognising that the decisions of other administrations have indicated that there was a lack of uniformity in the classification of these machines, the Delegate of South Africa

suggested that her administration could submit detailed information for the purpose of pursuing further clarification of the question. She also suggested that it might be necessary to make amendments to the legal text.

163. Another delegate pointed out that there was no desire or intent to change the scope of the current legal texts. He suggested that the classification of a specific machine, such as the machine that was the basis for the proposals by **South Africa**, should be addressed by the HS Committee prior to consideration of an amendment to the Explanatory Notes. The Sub-Committee agreed and invited the **South African** Administration to submit the classification question directly to the HS Committee.

164. **The Committee is invited to take note.**
