



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
26<sup>th</sup> Session  
-

NR0274E1  
(+ Annexes I to III)

O. Eng.

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POSSIBLE AMENDMENTS TO THE NOMENCLATURE AND  
EXPLANATORY NOTES TO CHAPTER 24

(Item III.A.4 on Agenda)

Reference documents :

42.083 (HSC/21)	NR0164E1 (RSC/23)
NC0090E2, Annex IJ/1 (HSC/23 - Report)	NR0165E2, Annex C/9 (RSC/23 – Report)
NC0284E1 (HSC/26)	NR0174E1 (RSC/24)
NC0340E2, Annexes G/2 and G/6 (HSC/26 – Report)	NR0197E1 (RSC/24)
NC0430E2, Annex Q/9 (HSC/27 – Report)	NR0205E2, Annex C/6 (RSC/24 – Report)
NR0144E1 (RSC/23)	NR0215E1 (RSC/25)
NR0160E1 (RSC/23)	NR0265E3, Annex C/5 (RSC/25 – Report)
NR0161E1 (RSC/23)	

I. BACKGROUND

1. At its 23<sup>rd</sup> Session (May 1999) the Harmonized System Committee examined the classification of non-aromatic cut tobacco consisting of fermented, stemmed and stripped tobacco leaves which have been cut into narrow (about 1 mm wide) strips of varying lengths (up to 4 cm). The Committee decided that the tobacco in question should be classified in heading 24.03 (subheading 2403.10).
2. At its 26<sup>th</sup> Session, the Harmonized System Committee re-examined the classification of this product on the basis of a **Swiss** reservation. After discussion, the Committee decided to reconfirm the classification of the non-aromatic cut tobacco in heading 24.03 (subheading 2403.10). (At the 27<sup>th</sup> Session, Classification Opinion 2403.10/1 with regard to this product was adopted (Annex Q/9 to Doc. NC0430B2 - HSC/27 Report) (as regards the discussions concerning the above, see Annex II to this document)).
3. In this regard it was decided that a study of the legal texts and Explanatory Notes to Chapter 24 was required. Administrations were therefore invited to submit information and proposals so that the Review Sub-Committee could prepare necessary amendments.

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4. By its circular letters of 10 January (English) and 16 January 2001 (French), the Secretariat invited all Contracting Parties to submit information and proposals (before 15 February 2001) in order for the Secretariat to prepare a document for the Review Sub-Committee's 23<sup>rd</sup> Session. The Secretariat received answers from Australia, Cyprus, Jordan, Mexico, Poland, Romania and Russia.
5. When this topic was discussed at the Review Sub-Committee's 23<sup>rd</sup> Session, the Delegate of Poland emphasised that her administration's written proposal to amend the legal texts and the Explanatory Notes to Chapter 24 was intended to make the demarcation line between headings 24.01 and 24.03 more clear. In her mind, the current texts did not reflect present technology with regard to the production of semi-manufactured tobacco. Furthermore, she reminded the Sub-Committee that the recent reservations concerning the classification of "Non-aromatic cut tobacco" and "Basic Blended Strip (BBS)" clearly indicated that legal text amendments were necessary (as for the discussion with regard to the BBS, see Annex G/6 to Doc. NC0340E2 - HSC/26 Report).
6. Another delegate was of the view that legal text amendments were not necessary and therefore favoured the status quo (as proposed by the Secretariat and the Australian Administration).
7. The EC Delegate indicated that he could also accept the status quo, but in his mind it was first necessary to determine whether the present situation could be improved. He agreed that the classification of intermediate tobacco products in the present Nomenclature created some problems. On the other hand, he had doubts as to certain elements in the Polish proposal, in particular with regard to new Notes 2 and 3 to Chapter 24 and the text of new subheading 2403.20. However, he agreed that this proposal could be used as a starting point to examine possible amendments to the legal texts. He therefore proposed that administrations should get in touch with their industry to find out whether the classification of intermediate tobacco products created problems and eventually to see whether legal text amendments were really necessary.
8. The Director pointed out that a possible solution to this problem might be to create one heading for unmanufactured products (with a limited coverage), another heading for finished products and a third heading for "other" products, including intermediate products. He also urged all administrations which were against legal amendments to inform the Secretariat, in view of the fact that such amendments might involve important tax consequences in many countries.
9. After this exchange of views, the Sub-Committee decided to return to this question at its next session. In the meantime, all administrations were asked to look into this question more carefully and to seek the views of their tobacco industry.
10. At the Sub-Committee's 25<sup>th</sup> Session, the Delegate of Poland stated that the structure of Chapter 24 should be amended (see paragraph 20 below in this document) to distinguish between unmanufactured, semi-manufactured and manufactured tobacco and indicated that her administration would submit a written proposal in this connection for the next session of the Sub-Committee in September.
11. One delegate stated that while her administration had previously made a proposal to amend the Nomenclature of Chapter 24, it was flexible on this question and could agree to examine the Polish proposal.

12. Another delegate indicated that he had made contact with his tobacco industry. Since this question involved complicated issues, such as regulatory, environmental and health issues, he favoured the status quo. Many other delegates also favoured the status quo.
13. Noting that there was no enthusiasm for tackling this issue, except within the context of the Polish proposal, the Director suggested that the Review Sub-Committee should focus its consideration on the new Polish proposal at its September session.
14. The Sub-Committee agreed with this suggestion and instructed the Secretariat to prepare a new working document for examination by the Sub-Committee at its next session on the basis of the promised new Polish proposal, which should include information on the background and history of this issue.
15. On 12 June 2002, the Secretariat received proposals with regard to possible amendments to the Nomenclature and Explanatory Notes to Chapter 24 from the Polish Administration, which is reproduced in Annex I to this document.

## II. SECRETARIAT COMMENTS

16. Poland proposes amendments to the structure of Chapter 24 at heading level as follows :
- Heading 24.01 : Unmanufactured tobacco; tobacco refuse
- Heading 24.02 : Manufactured tobacco (including semi-manufactured tobacco, other than products of heading 24.03) and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences (emphasis added)
- Heading 24.03 : Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes.
17. Under the Polish proposal, present heading 24.02 would become new heading 24.03 and present heading 24.03 would become new heading 24.02. To that extent, there would be no change of the scopes of these two headings.
18. A reference to semi-manufactured tobacco has been inserted in the text of proposed new heading 24.02 and the following two types of products are listed as semi-manufactured tobacco in the proposed Explanatory Notes :
- (5) **Semi-manufactured tobacco**, for example, tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition in order to prevent mould and drying, to preserve the flavour or to improve the properties of tobacco.
- (6) **Semi-manufactured cut tobacco** (including **non-aromatic cut tobacco**) which is cut into narrow strips.

19. The latter tobacco corresponds to the products mentioned in Annex II to this document and since it was classified in present heading 24.03, there would be no actual transfer with regard to these products.
20. As for the former, this reference appears in the Explanatory Note to heading 24.01 although slight modifications have been made and therefore this type of product would be transferred to new heading 24.02 under to the **Polish** proposal.
21. Moreover, the reference to "semi-manufactured tobacco" in new heading 24.02 could also entail the transfer of another type of product from heading 24.01, e.g., "Basic Blended Strip (BBS)" which at present is classified in heading 24.01 (see Classification Opinion 2401.20.1). A product containing 75% uncut stemmed leaves and 25% reconstituted tobacco, mixed together by controlled layering in a silo, could obviously, in the Secretariat's view, be regarded as "semi-manufactured". Accordingly, "BBS" could be classified in proposed new heading 24.02 by application of GIR 1.
22. The question for consideration is therefore whether the Sub-Committee agrees with the idea of creating a new category of semi-manufactured products in heading 24.02, thus entailing a transfer of certain products from heading 24.01 to new heading 24.02. If so, the next question would be how to define unmanufactured tobacco as against semi-manufactured tobacco and the Secretariat considers that it would be necessary to introduce a clear-cut definition of "unmanufactured" in the legal texts. In this context, the **Polish** Administration has not made concrete proposals.
23. In this connection, the Secretariat would like to draw the attention of the Sub-Committee to the fact that the Secretariat has already carried out a study with regard to improving the distinction between unmanufactured tobacco of heading 24.01 and manufactured tobacco of present heading 24.03, especially "cut" criteria in connection with "tobacco **not** ready for smoking" mentioned in the Explanatory Note to heading 24.01. Based on the above study, the Secretariat offered three options for consideration (i.e., (i) Deleting the cutting criterion, (ii) prescribing a size criterion, and (iii) a process based criterion). The Secretariat believes that these criteria would be useful when considering the **Polish** proposal. Details of the three options, which appear in paragraphs 24 to 28 of Doc. 42.083, are reproduced in Annex III to this document.

### III. CONCLUSION

24. The Sub-Committee is invited to consider whether legal amendments to Chapter 24 are necessary to provide for the classification of intermediate tobacco products. If so, the Sub-Committee is invited to examine the **Polish** proposal set out in Annex II to this document, taking into account the Secretariat's comments above.

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## Annex I

### COMMENTS BY THE POLISH ADMINISTRATION

“With reference to Annex C/5 to Doc. NR0265E3 (Report of the 25<sup>th</sup> Session of the Harmonized System Review Sub-Committee) the Polish Customs Administration is submitting the proposal concerning possible amendments to the Nomenclature and Explanatory Note to Chapter 24.

Taking into account the Norwegian proposal set out in Annex II to Doc. NR0174E1 (RSC/24) the Polish Administration is of the opinion that quantitative criteria are needed to make the distinction between “cased” products of heading 24.01 and “semi-manufactured” products of heading 24.02.

Having said this, the Polish Administration considers amendments to the Nomenclature and Explanatory Notes to Chapter 24 necessary to reflect current trade practice.

Our consultations with an expert on tobacco manufacturing process have revealed that drying and fermenting are sufficient processes to preserve tobacco during transport.

The Polish Administration therefore suggests maintaining three headings 24.01, 24.02 and 24.03 reading, as follows :

#### Amendments to the Nomenclature

##### **24.01 - UNMANUFACTURED TOBACCO; TOBACCO REFUSE.**

2401.10 - **Tobacco, not stemmed/stripped**

2401.20 - **Tobacco, partly or wholly stemmed/stripped**

2401.30 - **Tobacco refuse**

##### **24.02 - MANUFACTURED TOBACCO (INCLUDING SEMI-MANUFACTURED TOBACCO, OTHER THAN PRODUCTS OF HEADING 24.03) AND MANUFACTURED TOBACCO SUBSTITUTES; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES.**

2402.30 - **Smoking tobacco, whether or not containing tobacco substitutes in any proportion**

- **Other**

2402.91 - - **"Homogenised" or "reconstituted" tobacco**

2402.92 - - ***Semi-manufactured tobacco***

2402.99 - - **Other**

**24.03 - CIGARS, CHERROOTS, CIGARILLOS AND CIGARETTES, OF TOBACCO  
OR TOBACCO SUBSTITUTES.**

2403.20 - **Cigars, cheroots and cigarillos, containing tobacco**

2403.30 - **Cigarettes containing tobacco**

2403.90 - **Other**

**Amendments to the Explanatory Note**

In consequence of the proposed amendments to the Nomenclature, the following amendments to the Explanatory Notes are suggested :

1. Heading 24.01

- (a) Delete the second paragraph of item (1)
- (b) Insert the following new last paragraph for heading 24.01 :

*"However, the heading **does not cover** tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or with liquid of appropriate composition in order to prevent mould and drying, to preserve the flavour or to improve the properties of tobacco (heading 2402)."*

2. Heading 24.02

Delete and substitute :

This heading covers :

- (1) **Smoking tobacco, whether or not containing tobacco substitutes in any proportion**, for example, manufactured tobacco for use in pipes or for making cigarettes.
- (2) **Chewing tobacco**, usually highly fermented and liquored.
- (3) **Snuff**, more or less flavoured.
- (4) **Tobacco compressed or liquored for making snuff.**
- (5) **Semi-manufactured tobacco**, for example, tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with liquid of appropriate composition in order to prevent mould and

*drying, to preserve the flavour or to improve the properties of tobacco.*

- (6) **Semi-manufactured cut tobacco** (including **non-aromatic cut tobacco**) which is cut into narrow strips.
- (7) **Manufactured tobacco substitutes**, for example, smoking mixtures not containing tobacco. However, products such as cannabis are **excluded (heading 12.11)**.
- (8) "**Homogenised**" or "**reconstituted**" tobacco made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular sheets or strip. It can be either used in sheet form (as a wrapper) or shredded/chopped (as a filler).
- (9) **Tobacco extracts and essences**. These are liquids extracted from moist leaves by pressure, or prepared by boiling waste tobacco in water. They are used mainly for the manufacture of insecticides and parasiticides.
- (10) **Manufactured tobacco refuse** which is used as a filler.

The heading **does not cover** :

- (a) Nicotine (the alkaloid extracted from tobacco) (**heading 29.39**)
- (b) Insecticides of heading **38.08**.

## 2. Heading 24.03

Delete and substitute :

This heading is restricted to cigars (wrapped or not), cheroots, cigarillos and cigarettes, made of tobacco or of tobacco substitutes. Other smoking tobacco, whether or not containing tobacco substitutes in any proportion, is **excluded (heading 24.02)**.

This heading covers :

- (1) **Cigars, cheroots and cigarillos, containing tobacco.**  
Such products may be made wholly of tobacco or of mixtures of tobacco and tobacco substitutes, regardless of the proportions of tobacco and tobacco substitutes present in the mixture.
- (2) **Cigarettes containing tobacco.**  
Apart from cigarettes containing only tobacco, this heading also includes those made from mixtures of tobacco and tobacco substitutes, regardless of the proportions of tobacco and tobacco substitutes in the mixture.

- (3) **Cigars, cheroots and cigarillos of tobacco substitutes**, for example, "cigarettes" ("smokes") made from specially processed leaves of a variety of lettuce, containing neither tobacco nor nicotine.

The heading **does not cover** medicinal cigarettes (**Chapter 30**). However, cigarettes containing certain types of products specifically formulated to discourage the habit of smoking but which do not possess medicinal properties remain classified in this heading.

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## Annex II

### Discussions at the 23<sup>rd</sup> and 26<sup>th</sup> Sessions of the HSC regarding the classification of non-aromatic cut tobacco

#### **23<sup>rd</sup> Session**

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.
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).

#### **26<sup>th</sup> Session**

7. The Delegate of Switzerland opened the discussion in support of the reservation the Swiss Administration had entered in respect of the decision taken at the Harmonized System Committee’s 23<sup>rd</sup> Session to classify non-aromatic cut tobacco in heading 24.03 (subheading 2403.10). He emphasized that Docs. 12.000 (Annex G), 13.102 and 13.450 (Annex F) included important background information concerning the creation of the Explanatory Notes to headings 24.01 and 24.03. Since these

Explanatory Notes were still effective under the HS, due consideration should be given to the information appearing in these documents.

8. In this regard, he pointed out that cut tobacco and cased tobacco had been classified as unmanufactured tobacco of heading 24.01 for 35 years, and he saw no reason to change this practice. He further pointed out that, in his opinion, the French word "fabriqué" (manufactured) in the text of heading 24.03 only referred to products ready for distribution to the trade. Products which had to be further flavoured before they were "ready for smoking" were certainly not classified in heading 24.03 and should therefore, according to the Explanatory Note to heading 24.01, be classified in heading 24.01.
9. Certain delegates were of the same opinion as Switzerland. In their mind, products of heading 24.03 should be prepared and packed to meet all the requirements of the consumer. Intermediate products should therefore be classified in heading 24.01.
10. One delegate however pointed out that the product at issue was fermented, stemmed and stripped tobacco which was cut into narrow (about 1 mm wide) strips of varying lengths (up to 4 cm). Her administration classified tobacco with all or almost all veins removed, initially moistured, comminuted, mixed and initially cased in heading 24.01. Tobacco subjected to any other treatment was classified in heading 24.03, even if not ready for smoking. The product at issue was an intermediate product in the cigarette manufacturing process, and should therefore be regarded as manufactured tobacco of heading 24.03. She also pointed out that, according to her information, this product was a mixture of cut tobacco of different types such as Virginia, Burley and Oriental, and she emphasized that all non-aromatic cut tobacco was prepared for the production of specific brands of cigarettes.
11. Another delegate also pointed out that technical methods for the production of tobacco had changed since the preparation of the Explanatory Notes. It was, therefore, difficult to base the classification of tobacco on the Explanatory Notes. Furthermore, the HS Nomenclature did not include a specific heading for intermediate tobacco products. However, since the product at issue only had to undergo, after importation, a second homogenisation and the addition of flavourings before it was ready for smoking, it should be classified as an unfinished article having the essential character of the finished article in heading 24.03.
12. In this regard it was pointed out that Chapter 24 included three headings : heading 24.01 covered unmanufactured tobacco, heading 24.02 covered the finished articles and heading 24.03, covered manufactured tobacco, including intermediate products which had been subjected to some form of manufacturing. The semi-manufactured tobacco at issue, therefore, had to be classified in heading 24.03.
13. This delegate stated that the key factor in the classification of the tobacco in question was that it was cut to size in narrow, short strips. Thus, it was processed beyond the terms of heading 24.01, and was properly classified in heading 24.03 as "other manufactured tobacco".

14. When the matter was put to a vote, the Committee decided, by 28 votes to 9, to reconfirm the classification of the non-aromatic cut tobacco at issue in heading 24.03 (subheading 2403.10).

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### **Annex III**

#### Possible approaches to improving the distinguishing criteria (paragraphs 24 to 28 of Doc. 42.083)

24. As to future criteria for the distinction between headings 24.01 and 24.03, the Secretariat would like to offer the following options for consideration.

#### **A. Deleting the cutting criterion**

25. One possibility is to delete the cutting criterion altogether from the scope of heading 24.01. This would seem a very straightforward approach and easy to apply. In the Secretariat's view, it would also be in conformity with the present legal texts which do not envisage cutting operations for the purposes of stemming or stripping (see paragraph 16 above). However, "trimming", which is also a kind of cutting operation, may continue to be allowed in heading 24.01 so as to allow finishing operations for the purposes of packing and marketing of unmanufactured tobacco.

#### **B. Prescribing a size criterion**

26. Another possibility is to retain cutting, but to specify a minimum dimension as was originally suggested by FEDETAB (see paragraph 7 above). In this context, the Secretariat has noted that, according to the information submitted by that organization, the size (length) of dried tobacco leaves may range from 3 cm to 80 cm, depending on the variety (see Doc. 13.102). If the Committee is inclined to specify a size criterion for unmanufactured tobacco (subheadings 2401.10 and 2401.20) which has been cut, then the Secretariat would suggest 2.5 or 3 cm as the minimum dimension when measured in any direction so as to avoid misclassification of smaller leaves which might have been trimmed. If the Committee is not in favour of such quantitative criterion, it may consider amplifying the Explanatory Note to heading 24.01 with a view to clarifying the scope of the term "cut" so as to exclude finely cut strips without referring to a specific size.

#### **C. Process based criterion**

27. A third possibility could be to specify the processes allowed for unmanufactured tobacco of heading 24.01, e.g., harvesting, curing, fermenting, stemming/stripping, trimming, breaking, cutting (into any dimension or a specified minimum dimension), blending, "casing" ("saucing" or "liquoring"), drying, homogenising, flavouring, etc. This approach is not likely to solve the present difficulties in view of changes usually made in the order of processing by manufacturers depending on the technology employed for further manufacture (e.g., cigarettes).
28. The Secretariat would strongly prefer alternative A above which is in line with the legal texts and would be easy to apply. Whichever option is chosen, the Secretariat would suggest deleting the expression "tobacco ready for smoking" which is not clear in the scope and is misleading.
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