



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

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(+ Annex)

O. Eng.

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POSSIBLE AMENDMENTS TO THE STRUCTURED NOMENCLATURE

TO HEADING 38.24 (PROPOSAL BY UNEP)

(Item III.B.4 on Agenda)

I. BACKGROUND

1. On 3 July 2002, the Secretariat received the following note from the Secretariat for the Vienna Convention and its Montreal Protocol – The Ozone Secretariat of the United Nations Environmental Programme (UNEP) containing a proposal to amend the structured nomenclature to heading 38.24.

II. NOTE FROM UNEP

2. "I wish to refer to your letter of February 2, 2000, on the WCO Council's recommendation of June 1999 on national Customs codes for certain ozone depleting substances (ODS) when traded as pure substances. In particular, I refer to the HS Committee's decision to further examine the issue of relevant codes for ODS when traded as mixtures, based on further information to be submitted by the UNEP.
3. As provided in Decision X/18 of the Parties to the Montreal Protocol taken in Cairo in 1998, the issue of identifying relevant Customs codes for ODS when traded as mixtures has now been examined by a special group of experts, which also included a member of the WCO Secretariat. It is our understanding that, under the Harmonized System, such mixed chemicals will belong to subheadings in Chapters 30 to 38 (except for the exceptional cases when the additional chemical is added only for safety or similar reasons). The group has recognised that it is necessary to identify the application or function of the mixtures containing ODS in line with the given detailed hierarchic structure of the Harmonized System in order to identify their proper place among the subheadings contained in these Chapters. A proposal is included in the Annex based on this recognition. The proposal covers those HS codes that we have been able to identify. There might be others that we have overlooked; if so, please let us know.

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4. Considering the time required for changes in the international HS codes we are initially requesting that the WCO make recommendations for national codes. However, to the extent you deem it is feasible, some or all of these national codes could later be introduced at the international level. In particular, a proposal regarding subheading 3824.7 is further elaborated in the Annex.
5. As a separate issue: it would be very helpful if the abbreviations commonly used, such as CFCs, HCFCs, etc., could also be included in the recommended codes. It would highly facilitate communication between environmental officers and Customs officers. Separate Customs codes for ODS will greatly enhance co-operation between the Customs authorities and authorities in charge of monitoring and eventually eliminating imports and exports of ODS. As an example, it will enable Customs authorities to highlight the potential need for an import licence under identified Customs codes.
6. As you may be aware, many of the alternatives of the strongly ozone-depleting substances are mixtures that contain hydrochlorofluorocarbons (HCFCs), substances with lower ozone depleting potentials. Under the Montreal Protocol, these alternatives can continue to be manufactured, imported and exported until 2040. The ability to accurately monitor the trade in these substances will therefore be an issue for some time to come.

Refrigerants, foam blowing agents and miscellaneous applications

7. ODS mixtures that do not fall under any specifically described application in the HS hierarchy will fall in heading 38.24 "*chemicals and preparations not elsewhere specified or included*". This includes refrigerants, a major application for the ODS, but also foam blowing agents and various miscellaneous applications.
8. Subheading 3824.7 "*Mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens*" was requested in 1990 to take care of two typical CFC refrigerants mixtures, R500 and R502, at a time when only five CFCs and three halons were controlled under the Montreal Protocol. It was initially accepted as a recommendation for national codes and became in 1996 a code at the international level. It is subdivided into subheading 3824.71 "*containing acyclic hydrocarbons perhalogenated only with fluorine and chlorine*" (CFCs) and subheading 3824.79 "Other" and covers together all CFC and halon mixtures "not elsewhere specified or included".
9. All other ODS mixtures "not elsewhere specified", mixtures containing HCFCs as well as mixtures containing 1,1,1-trichloroethane, carbon tetrachloride, methyl bromide or bromochloromethane, fall in the very last subheading 3824.90 "*Other*", together with all other chemicals of any type that are not specifically identified in the Harmonized System.
10. The lack of specific classifications for mixtures in the Harmonized System is a major problem for Parties to the Montreal Protocol. In particular, the lack of a suitable classification for the HCFC-containing mixtures which are widely traded as refrigerants and are allowed a long-term phase-out schedule under the Montreal Protocol (until 2040), but also for mixtures used in other applications, is creating difficulties for monitoring and controlling ODS consumption in many countries.
11. As CFC and halon mixtures fall in subheading 3824.7, and due to the time delay in changing the international HS codes we propose, for the time being, only a Recommendation for separate national codes in subheading 3824.90 that distinguishes mixtures containing

HCFCs, 1,1,1-trichloroethane, carbon tetrachloride, methyl bromide and bromochloromethane from other miscellaneous chemicals.

Proposal (Recommendation for national codes) :

12. 3824.90 (Chemicals and preparations not elsewhere specified or included – Other) :
- Containing carbon tetrachloride
 - Containing 1,1,1-trichloroethane (methyl chloroform)
 - Containing bromochloromethane
 - Containing methyl bromide
 - Containing derivatives of acyclic hydrocarbons, halogenated only with fluorine and bromine (HBFCs)
 - Containing derivatives of acyclic hydrocarbons, halogenated only with fluorine and chlorine (HCFCs), whether or not containing PFCs or HFCs
 - Containing other derivatives of acyclic hydrocarbons, halogenated only with fluorine (PFCs or HFCs), but not containing HCFCs.
13. In connection with the next revision at the international level it would, however, be useful to revise subheading 3824.7 and to transfer all ODS mixtures that are now covered by subheading 3824.90 to subheading 3824.7.

Proposed later change of the international codes (replacing the above Recommendation under subheading 3824.90 for national codes) :

Subheadings 3824.7, 3824.71 and 3824.79

14. Delete and substitute:
- **Mixtures containing halogenated derivatives of acyclic hydrocarbons**
 - 3824.71 -- Containing perhalogenated acyclic hydrocarbons, perhalogenated only with fluorine and chlorine (CFCs), whether or not containing HCFCs, PFCs or HFCs**
 - 3824.72 -- Containing perhalogenated acyclic hydrocarbons, perhalogenated only with fluorine and bromine or fluorine, bromine and chlorine (halons)**
 - 3824.73 -- Containing other acyclic hydrocarbons, halogenated with fluorine and bromine (HBFCs)**
 - 3824.74 -- Containing other derivatives of acyclic hydrocarbons, halogenated with fluorine and chlorine (HCFCs), whether or not containing PFCs or HFCs but not containing CFCs**
 - 3824.75 -- Containing carbon tetrachloride**

- 3824.76 -- Containing 1,1,1-trichloroethane (methyl chloroform)**
- 3824.77 -- Containing methyl bromide or bromochloromethane**
- 3824.78 -- Containing other derivatives of acyclic hydrocarbons, halogenated only with fluorine (PFCs or HFCs), but not containing CFCs or HFCs**
- 3824.79 -- Other.”**

III. SECRETARIAT COMMENTS

15. First, the Secretariat would like to point out that the proposal of the UNEP concerning a new Council Recommendation on the insertion in national statistical nomenclatures of subheadings for mixtures containing ozone depleting substances and some of their substitutes in headings 34.02, 38.08, 38.13, 38.14 and 38.24 will be put placed on the agenda of the 30th Session of the Harmonized System Committee as a separate item.
16. In the proposal reproduced in paragraph 14 above, the UNEP is suggesting to amend the structured nomenclature to heading 38.24 with the intention of regrouping all mixtures containing halogenated derivatives of acyclic hydrocarbons, which are presently classified in subheadings 3824.71, 3824.79 and 3824.90, in new subheadings 3824.71 to 3824.79. The proposed separate identification at subheading level is based on the presence of a particular component in the mixture. In the Secretariat's understanding, mixtures are proposed to be regrouped according to a hierarchy respecting the needs of the Montreal Protocol on substances that deplete the ozone layer.
17. The Secretariat has no statistical data concerning volume of trade in the commodities proposed for separate identification at subheading level. However, taking into account the role and importance of the Montreal Protocol, the creation of new subheadings with the aim of monitoring substances controlled by virtue of this Protocol would have well recognised environmental and social concerns. The exception to the threshold criterion in the volume of international trade for the creation of new subheadings would therefore be applicable in this case.
18. With respect to the use of abbreviations in the new subheading text, as proposed by UNEP, the Secretariat has some concerns as to whether they could be applied uniformly and properly.
19. Based on the present approach, the commonly used name of a chemical compound specifically mentioned in the HS Nomenclature is followed by an alternative/equivalent chemical name for that compound in brackets. An abbreviation is used, e.g., in subheading 2903.62, where the symbol "DDT" is followed by the chemical name "1,1,1-trichloro-2,2-bis(*p*-chlorophenyl)ethane" in brackets.
20. On the other hand, application of the same approach in this particular case would result in a complicated subheading text, which could also be difficult to apply. The Secretariat therefore would leave it to the Sub-Committee to decide whether the abbreviations should be used in the proposed text and if so, in which particular case.

21. With respect to the actual wording suggested, for the sake of consistency the Secretariat proposes using of the expression “derivatives of acyclic hydrocarbons” instead of “acyclic hydrocarbons” in proposed subheadings 3824.71, 3824.72 and 3824.73.
22. Taking into account the observations above and on the basis of the proposal from UNEP, the Secretariat has prepared possible amendments to the structured nomenclature, which are reproduced in the Annex to this document. The expression “derivatives of” in the proposed subheadings 3824.71, 3824.72 and 3824.73 and abbreviations with the corresponding chemical names in proposed subheadings 3824.71, 3824.74 and 3824.78 have been placed in square brackets.
23. Finally, in connection with the proposed amendments, the Secretariat would recall that a Subheading Explanatory Note to subheadings 3824.71 and 3824.79 exists within the present Explanatory Note to heading 38.24 (page 703). Consequently, if the Sub-Committee accepts the proposed amendments to the structured nomenclature, an amendment to this Subheading Explanatory Note would also be necessary. Depending on the outcome of discussions in the Sub-Committee, the Secretariat could prepare draft amendments to the Explanatory Note during the intersession.

IV. CONCLUSION

24. Taking into account the Note from UNEP and the Secretariat’s comments above, the Review Sub-Committee is invited to consider the proposed amendments to the structured nomenclature to heading 38.24 as set out in the Annex to this document.

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