



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
27<sup>th</sup> Session  
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NR0367E1  
(+ Annex)

O. Eng.

Brussels, 24 February 2003.

POSSIBLE AMENDMENTS TO THE STRUCTURED NOMENCLATURE

TO HEADING 38.24 (PROPOSAL BY UNEP)

(Item III.A.14 on Agenda)

Reference documents :

NR0322E1 (RSC/26)	NS0073E1 (SSC/18)
NR0332E3, Annexes D/4 and F/16 (RSC/26 – Report)	NS0078E1 (SSC/18)
NC0601E1 (HSC/30)	NS0080E2, Annexes A/11 and C/9 (SSC/18 – Report)

I. BACKGROUND

1. At its 26<sup>th</sup> Session, the HS Review Sub-Committee discussed a proposal by UNEP to amend the structured nomenclature to heading 38.24 with a view to regrouping mixtures containing halogenated derivatives of acyclic hydrocarbons.
2. There was general agreement in the Sub-Committee that the proposal reproduced in the Annex to Doc. NR0322E1 should be sent to the Scientific Sub-Committee for examination together with the following questions :
  - (i) Whether the chemical nomenclature of the proposed texts was acceptable from the technical point of view;
  - (ii) Whether it would be more beneficial to refer to generic names of chemicals or to abbreviations, or to use both in the proposed text;
  - (iii) Whether the term “derivatives of” should be used in proposed subheadings 3824.71 to 3824.73;
  - (iv) Whether it would be possible to combine certain of the proposed subheadings as one new subheading, based on the phase-out schedule of chemicals in the Montreal Protocol, for the sake of simplicity;

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- (v) Whether the texts, as proposed, could be administered by Customs administrations;
  - (vi) Whether it would be possible to identify and to analyse the commodities covered by proposed separate subheadings in Customs laboratories and to suggest analytical methods suitable for this purpose.
3. One delegate expressed concerns as to whether newly proposed subheading 3824.7 appropriately reflected the needs of the Montreal Protocol since the scope of that subheading would be wider than the present one and certain products would be transferred thereto from present subheading 3824.90. He informed the Review Sub-Committee that his administration would submit written comments to the Scientific Sub-Committee in this respect.
4. By letter dated 13 November 2002, in a response to the questions in paragraph 23 of Doc. NC0601E1 and in paragraph 8 of Doc. NS0073E1, the Secretariat received a Note from UNEP (the Ozone Secretariat) containing a revised proposal concerning the new WCO Recommendation and the possible amendment to heading 38.24. The note and the revised proposal were reproduced in Doc. NS0078E1.
5. The Scientific Sub-Committee, at its 18<sup>th</sup> Session, examined the proposal to amend the structured nomenclature to heading 38.24 set out in the Annex to Doc. NS0073E1, taking into account the note and the revised proposal from UNEP reproduced in Doc. NS0078E1. The observations of the Scientific Sub-Committee are set out below.

## II. OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE

6. Beginning the discussion of this agenda item, the Director reiterated that the aim of this proposed amendment was to monitor the products which were restricted by the Montreal Protocol on Substances that Deplete the Ozone Layer (ODS) and were of environmental concern. The expected volume of trade was therefore not very high.
7. The Delegate of **Canada** briefly introduced her administration's proposal distributed during the meeting as a "non-paper", suggesting to regroup all products covered by the Montreal Protocol and the Rotterdam Convention under one heading in the Nomenclature. The Director saw some merit in the **Canadian** proposal but also noted a number of technical problems with regard to its presentation. The Scientific Sub-Committee therefore agreed not to discuss the **Canadian** proposal in depth and invited the **Canadian** Administration to redraft its proposal and to formally submit it for the consideration of the Review Sub-Committee at a future session.
8. The Sub-Committee then agreed to proceed with a review of the texts reproduced in the Annex to Doc. NS0073E1, examining the questions mentioned in paragraph 2 to that document.
9. Taking into account the fact that the annexes to the Montreal Protocol included only halogenated derivatives of hydrocarbons containing one to three carbon atoms, the Scientific Sub-Committee agreed to recommend limiting the proposed amendments to subheading 3824.7 only to mixtures containing these substances, using the text "mixtures containing halogenated derivatives of methane, ethane or propane" for that purpose at one-dash subheading level.

10. The Scientific Sub-Committee preferred the consistent use, throughout the entire text, of the condensed chemical names, such as chlorofluorocarbons, hydrochlorofluorocarbons, perfluorocarbons, hydrofluorocarbons and hydrobromofluorocarbons, followed by the corresponding abbreviations in brackets, rather than the use of the descriptive texts for the different types of halogenated hydrocarbons. Consequently, there was no need to use the term “derivatives of” in proposed subheadings 3824.71 to 3824.74 and 3824.78.
11. In the case of proposed subheading 3824.72, the Scientific Sub-Committee preferred reference to the chemical names of three specific compounds - “bromochlorodifluoromethane”, “bromotrifluoromethane” and “dibromotetrafluoroethanes” - which were listed as “halons” with their specific halon numbers in Annex A to the Montreal Protocol. It was also agreed to recommend deletion of the term “(halons)” from the proposed subheading text since the general term “halons” was synonymous with a much larger group of compounds than the three compounds listed in the Montreal Protocol.
12. Furthermore, for the sake of consistency, the Scientific Sub-Committee recommended modification of the chemical name of methyl bromide in proposed subheading 3824.76 and to refer first to “bromomethane” followed by the alternative name “methyl bromide” in brackets.
13. Taking into account the Secretariat’s comments in paragraphs 12 and 13 of Doc. NS0073E1, the Scientific Sub-Committee was of the view that the proposed subheadings for mixtures containing carbon tetrachloride and 1,1,1-trichloroethane, both being chlorinated derivatives, could be combined into one new subheading - 3824.75. At the same time, subheadings 3824.77 and 3824.78, in Annex to Doc. NS0073E1, could be renumbered as 3824.76 and 3824.77, respectively. It was, however, noted that this possibility should be checked with UNEP, to ensure that the needs of the Montreal Protocol were respected.
14. One delegate pointed out that the introduction of the proposed amendments would place an extra burden on Customs administrations in the sense that a considerable amount of analysis would be necessary in order to distinguish between the various types of halogenated compounds identified in the new subdivisions. Nevertheless, he agreed that it would be technically possible to administer these texts. To this end, standard analytical methods could be found and his administration could provide them to other administrations.
15. Another delegate indicated that, to her knowledge, no officially validated methods for ODS had been developed by UNEP. She expressed concerns as to whether a consistent methodology could be developed, since the chemical analysis of these compounds was not so straightforward. Due to their high volatility, there might be some problems with standard reference materials.
16. A third delegate stated that in addition to the above, a standard method on how to express the analytical results should be established. Since different homologues or isomers could be present in a mixture, the result should be expressed in terms of an equivalent of a particular chemical. Yet another delegate mentioned that mass spectrometry could be one of the suitable methods for analysis of these kinds of mixtures.
17. Several delegates had doubts as to how the word “containing” in the proposed texts should be interpreted. Questions arose as to whether the trace presence of a particular compound, e.g., as an impurity, would qualify the mixture for classification in the subheading in question, or whether the particular compound would need to be deliberately added to the mixture in order for it to fall within that subheading.

18. The Director explained that the term “containing” was not new in the Nomenclature. In the past the Harmonized System Committee had concluded that even a small quantity of an ingredient in a product would suffice to qualify the product as “containing” that particular ingredient. He suggested that the Secretariat could further examine the needs and intentions of UNEP with regard to this issue.
19. Subject to the modifications and comments summarised above, the Scientific Sub-Committee agreed to recommend the possible amendment of the structured nomenclature to heading 38.24 as set out in Annex C/9 to Doc. NS0080E2 (SSC/18 – Report).

### III. SECRETARIAT COMMENTS

20. During the intersession, acting on the Scientific Sub-Committee’s instructions, the Secretariat has contacted UNEP (the Ozone Secretariat) with the following questions :
- (i) whether mixtures containing carbon tetrachloride or 1,1,1-trichloroethane could be identified together in one new subheading in view of the needs of the Montreal Protocol;
  - (ii) what the needs and intentions of the Montreal Protocol and the Ozone Secretariat were as regards the use and interpretation of the term “containing” in the new proposed subheadings.
21. In the letter to UNEP, the Secretariat also recalled that UNEP had withdrawn national subdivisions for substitutes for ODS in the revised proposal regarding the draft WCO Recommendation, but was proposing to include them in the draft amendment to heading 38.24.
22. This meant that the proposed nomenclature amendment would be more complex and would not be consistent with the national subdivisions recommended by the draft Recommendation. Consequently, the wording of the proposed nomenclature amendment would be more complicated and more difficult to apply than the Recommendation itself. In this connection, the Secretariat asked UNEP to submit comments or arguments for consideration by the Review Sub-Committee support of this approach.
23. Due to the short intersession, UNEP has not been able to provide a summarised reply but only comments from individual members of the Expert Group on Customs Codes nominated by the Parties to the Montreal Protocol.
24. Some members of the Expert Group considered that mixtures containing carbon tetrachloride or 1,1,1-trichloroethane should have separate subheadings because import and export data for those substances, even if contained in mixtures, must be reported to the Ozone Secretariat under Article 7 of the Montreal Protocol.
25. Another member of the Expert Group, however, found it acceptable to combine mixtures containing carbon tetrachloride or 1,1,1-trichloroethane in one subheading, if necessary. She saw the identification of the controlled substances by Customs as the overriding objective, and obtaining statistical data as secondary.
26. With regard to the term “containing” one member of the Expert Group understood that this term should cover all cases in which a substance was deliberately added, even in trace amounts, but not to include any unintentional by-products. Other members agreed, in principle, pointing out that in the spirit of Montreal Protocol Decision IV/12, if a product had

been added deliberately then it fell in the category of “containing”; inadvertent quantities were not included in that category.

27. In this context, the Secretariat shares the doubts expressed by certain delegates during the 18<sup>th</sup> Session of the Scientific Sub-Committee and feels that some difficulties may arise with regard to the use of the term “containing” in the proposed texts. In the Secretariat’s view, a distinction between trace amounts of a substance added deliberately to the mixture and the same substance present as an impurity would be very difficult or even impossible to make from a sample. For this purpose, additional technical documentation and other appropriate information would also have to be taken into consideration. Such information might, however, not be available to Customs in all cases.
28. Furthermore, mixtures containing ODS substitutes (perhalogenated fluorocarbons (PFCs) and hydrofluorocarbons (HFCs)) are proposed by UNEP to be separately identified in new subheading 3824.77 and to be mentioned in subheadings 3824.71 and 3824.74, despite the fact that they are not covered by the Montreal Protocol but by the Kyoto Protocol. In this connection, one member of the Expert Group expressed her opinion that the reason why these substances had been retained in the revised UNEP proposal concerning possible nomenclature amendments was based on the hope that a request from the Kyoto Protocol side would be submitted to the WCO Secretariat before the possible nomenclature amendment to heading 38.24 had been finalised.
29. To date, the Secretariat has not received any proposal in this regard from the Kyoto Protocol authorities.
30. On the basis of the observations of the Scientific Sub-Committee, the Secretariat has prepared the possible amendments to the structured nomenclature to heading 38.24 which are set out in the Annex to this document. The separate subheading for PFCs and HFCs, as well as references to these substances in other proposed subdivisions were placed in square brackets. Mixtures containing carbon tetrachloride or 1,1,1-trichloroethane were identified in one new subheading, as proposed by the Scientific Sub-Committee.
31. Taking into account the fact that the **Canadian** Administration was invited to redraft and to formally submit its proposal to regroup all products covered by the Montreal Protocol and the Rotterdam Convention under one heading in the Nomenclature for the consideration of the Review Sub-Committee at a future session, it appears that a substantially new approach is being envisaged by that administration as an alternative to the proposal made by UNEP.
32. In the Secretariat’s view, both of these alternatives should be examined by the Review Sub-Committee. At this point, the Secretariat believes that administrations, UNEP and the Secretariat need further time to study the questions raised in paragraphs 20 to 22 above and to elaborate on the matter in greater detail. At this time the Secretariat, therefore, wishes to make only the following technical comments with regard to the proposal from UNEP.
33. As reported in the observations above, the Scientific Sub-Committee recommended limiting the scope of new subheading 3824.7 to “mixtures containing halogenated derivatives of methane, ethane or propane”. This means that the scope of new subheading 3824.71 would be narrowed in comparison with current subheading 3824.71. Based on the current practice, the same subheading number should not be used in such case.

34. The Secretariat would therefore suggest beginning the proposed subdivisions with code number 3824.72 and renumbering the all proposed two-dash subheadings 3824.71 to 3824.77 as 3824.72 to 3824.78, respectively. In the Annex to this document, the code numbers proposed by UNEP are followed by the alternative codes as suggested by the Secretariat, both in square brackets.

#### IV. CONCLUSION

35. Taking into account the observation of the Scientific Sub-Committee and the Secretariat's comments above, the Review Sub-Committee is invited to examine the proposed amendments to the structured nomenclature to heading 38.24, as set out in the Annex to this document.

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