



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
27th Session
-

NR0370E1
(+ Annexes I and II)

O. Eng.

Brussels, 26 February 2003.

PROPOSAL BY THE CANADIAN ADMINISTRATION TO CREATE
A NEW SUBHEADING NOTE TO CHAPTER 39 WITH REGARD TO
MULTILAYERED SHEETS OF PLASTICS

(Item III.B.5 on Agenda)

I. BACKGROUND

1. By its message of 20 December 2002, the Canadian Administration presented a note expressing its concern about the classification of multi-layered sheets of plastics under heading 39.20. To remedy the situation, it suggests introducing a new Subheading Note to Chapter 39. The note submitted by the Canadian Administration is reproduced in Annex I to this document.

II. SECRETARIAT COMMENTS

2. The Canadian Administration indicates that it had been applying Subheading Note 1 to Chapter 39 at the subheading level when classifying, for example, a multi-layered sheet of different types of plastics within heading 39.20. However, a national Court decided that such commodities should be classified on the basis of General Interpretative Rule (GIR) 3 (b), the rationale being that a composite of two (or more) plastics is not a copolymer or a polymer blend and for that matter Subheading Note 1 to Chapter 39 would not apply. The Canadian Administration also indicates that there is apparently no uniform world-wide interpretation and, therefore, classification, of these composite goods.
3. In providing classification advice to Member administrations with respect to commodities similar to those referred to in the Canadian submission, the Secretariat has taken the same view as the Canadian International Trade Tribunal did, i.e., it classified such commodities at the subheading level of heading 39.20, by application of GIR 3 (b) and not by applying Subheading Note 1 to Chapter 39.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 2974

4. Sheets consisting of two or more layers of plastics are to be classified in heading 39.20, if they are not cellular and not reinforced, laminated, supported or similarly combined with other materials. The structured nomenclature to that heading is based on the type of plastics. Similar structures can be found in headings 39.15 to 39.18, 39.20, 39.21 and 39.23. The new Subheading Note 2, as proposed by **Canada**, would be applicable to all subheadings of Sub-Chapter II of Chapter 39 (i.e., headings 39.15 to 39.26), which refer to a particular type of plastics.
5. The Secretariat has some reservations vis-à-vis the appropriateness of the proposed amendment. First, it is not convinced that the classification approach suggested by **Canada** would necessarily facilitate day to day classification work, bearing in mind that it would not only be applicable to heading 39.20 but to all headings of Sub-Chapter II. Laboratory analysis will be needed for each shipment, in order to identify the monomer units of the plastics used.
6. Second, the Secretariat is also concerned about the proposed wording of the new Subheading Note. The phrase “products (. . .) are to be classified in the same subheading as products which are of single plastics of polymers composed of the same monomer units in the same proportions” is not easy to understand, although similar language appears in the last paragraph of current Subheading Note 1. However, in the latter case, there is a clear relation between the expression “polymers of the same monomer units” and the subject of that phrase, i.e., “polymer blends”. Furthermore, there might be a contradiction in the expression “single plastics of polymers composed of the same monomer units in the same proportions” (emphasis added), since the phrase “in the same proportions” presupposes the presence of two or more different types of plastics.
7. It is also not entirely clear to the Secretariat what is meant by the phrase “except where the context otherwise requires” in the context of the subheadings of headings 39.15 to 39.26. For example, the structure of the subheadings of heading 39.21 distinguishes between “cellular plastics” on the one hand and “other” on the other hand. Would the proposed Subheading Note be applicable to a sheet consisting of a layer of cellular plastics with a layer of non-cellular plastics ?
8. The **Canadian** Administration may wish to clarify the above points.
9. The Secretariat has prepared a draft amendment to Chapter 39 based on the **Canadian** proposal, which is reproduced in Annex II to this document.

III. CONCLUSIONS

10. The Sub-Committee is invited to examine the proposal of the **Canadian** Administration to create a new Subheading Note to Chapter 39 with regard to multi-layered sheets of plastics, as set out in Annex I to this document, taking into account the comments and alternative proposals of the Secretariat in paragraphs 2 to 9 above. The proposed amendment is set out in Annex II to this document.

* * *

Note from the Canadian Administration
Proposed Subheading Note to Chapter 39

1. **Canada** is concerned about the classification of plastic goods composed of two or more components of plastics (e.g., multi-layered sheets of plastics).
2. We considered a plastic sheet composed of one layer of poly(ethylene terephthalate), 20 % by weight, and a second of polyethylene, 80% by weight, to be a good of heading 39.20 (Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials).
3. The first paragraph of Note 4 to Chapter 39 reads as follows :

"The expression "copolymers" covers all polymers in which no single monomer unit contributes 95 % or more by weight to the total polymer content."

As no single monomer in the total polymer content of the plastic sheet contributes 95% or more by weight, we considered the plastic sheet described above to be a copolymer.
4. Subheading Note 1 to Chapter 39 directs how polymers, including copolymers, are to be classified at the subheading level. As there is no "Other" one-dash subheading under heading 39.20 we classified the plastic sheet, by the application of Subheading Note 1 (b) (1), in subheading 3920.10.
5. However, further to an appeal to the **Canadian International Trade Tribunal**, we must now classify such a plastic sheet in subheading 3920.62 [-- Of poly(ethylene terephthalate)].
6. It was decided the plastic sheet was a composite of two plastics and not a copolymer, or for that matter a polymer blend, and therefore Subheading Note 1 to Chapter 39 was not applicable. As the product was applied to paper products (e.g., restaurant menus) to protect them from soiling, the exterior layer of poly(ethylene terephthalate) was considered to give the product its essential character and it was classified by the application of GIR 3 (b).
7. **Canada** now classifies plastic goods composed of two or more components of plastic (hereafter referred to simply as "such goods") on that basis.
8. It is our understanding that some countries classify such goods pursuant to GIR 1 (by the application of Note 4 and Subheading Note 1 to Chapter 39), as we had prior to the **Canadian** Court decision, while others do so by applying GIR 3 (b) and determining their essential character.
9. Determining the essential character of such goods can be extremely complicated and subjective. Essential character may be based on an number of characteristics; these include, but are not limited to :

colour	biodegradability	Oxygen index
density	biocompatibility	melt temperature
stiffness	tear resistance	hot melt properties
strength	flame resistance	coefficient of friction
reactivity	impact resistance	chemical absorption
elasticity	weather resistance	smoke generation on burning
flexibility	chemical resistance	thermal resistance/conductivity

elongation	electrical resistance	thermoplastic/thermoset properties
printability	radiation resistance	permeability/impermeability to
optical clarity	wear/abrasion resistance	chemicals and gases

10. The characteristic that would be considered to provide the essential character depends entirely upon the use to which they are put. Such goods used in the manufacture of capacitors could also be used in the manufacture of packaging, but would be chosen for entirely different reasons for each use.
11. Each component in such goods could have multiple characteristics relevant to the use to which they are put. Each of the relevant characteristics would have to be considered. The classification process only becomes more difficult as the number of characteristics to consider can increase at a greater rate than the number of components.
12. To further complicate the classification process, two or more components could contribute to the characteristic that is found to give the product its essential character. Determining which contributes the most towards that characteristic would be a complex and subjective process. For example, a component of lesser proportion by weight could be the primary source based on its performance characteristics. In some instances, laboratory analysis may be unable to determine even the relative weight contributions of the various components. **Canada** is aware of complex, co-extruded films for packaging with up to 13 different layers of plastics, each of which is chosen for a particular characteristic(s).
13. A basic tenet of the Harmonized System is that, unless otherwise indicated (for example, heading 38.09), classification should be according to function/composition, not use. As noted previously, the essential character of such goods often varies according to how they are used. In those cases, classification pursuant to GIR 3 (b) would be purely according to use, not function or composition. That is inconsistent with Sections VI and VII of the Nomenclature that are based primarily on chemical composition and relative weights.
14. For the sake of international consistency, and to simplify the classification of such goods, **Canada** proposes the following :

Chapter 39, Subheading Notes.

New subheading note.

Insert the following new note after Subheading Note 1 :

- 2.- Within any one heading of Sub-Chapter II, except where the context otherwise requires, products of plastics composed of two or more components of plastics (for example, multi-layered sheets) are to be classified in the same subheading as products which are of single plastics of polymers composed of the same monomer units in the same proportions.

Renumber current Subheading Note 2.

15. The proposed text provides a quantifiable, objective and easy to administer criterion that parallels the current treatment of polymer blends in the last paragraph of Subheading Note 1 to Chapter 39.
16. Under our proposal, the goods described in paragraph 2 (above) would be classified in the same subheading as a single plastic product of a polymer composed of 20 % of the monomer units of poly(ethylene terephthalate) and 80 % of ethylene monomer units. Using

present Subheading Note 1 (b) (1) to Chapter 39, the goods would therefore be classified as a film of polymers of ethylene of subheading 3920.10 using GIR 1 rather than a film of poly(ethylene terephthalate) or of polymers of ethylene as would be the case using the more subjective GIR 3 (b). Additional examples that demonstrate the scope of the issue may be found in the Appendix.

17. Should our proposal be adopted, **Canada** is prepared to draft Explanatory Notes for the consideration of the Committee.

o

o o

Examples of Multi-Component Plastics Products

1. A clear, colourless, co-extruded, non-cellular film 0.15 mm thick, composed of the following two layers :

1. polypropylene 40 %
2. ethylene-propylene copolymer 60 % (by weight).
In the copolymer layer, the ethylene/propylene monomer unit ratio is 70/30

In the total polymer content, the propylene monomer unit constitutes 58 % by weight of the total polymer content and the ethylene monomer unit constitutes 42 % by weight.

As the product use is unknown, we are unable to provide any suggestion as regards essential character based upon functional considerations.

2. A non-cellular film, metallic grey on one side and white on the other, approximately 0.07 mm thick, and constructed of the following layers :

1. a clear, colourless layer (approximately 21 % by weight of product) composed of polyethylene terephthalate;
2. a white layer (approximately 16 % by weight of product) composed of a compounded polymer of ethylene. Within this layer, 12.5 % (or 2 % of the total product) is filler and colourants;
3. a metallic grey layer (approximately 17 % by weight of product) composed of polypropylene coated with a very thin aluminium-based coating. The coating is negligible by weight;
4. a clear colourless layer (approximately 20 % by weight of product) composed of polyethylene; and
5. a clear, colourless layer (approximately 26 % by weight of product) composed of a polymer of ethylene, specifically an ethylene-vinyl acetate copolymer. The ethylene monomer unit represents approximately 80 % by weight of the copolymer.

As the product use is unknown, we are unable to provide any suggestion as regards essential character based upon functional considerations.

Monomer units in the total polymer content of the product

Layer	Monomer units from PET	Ethylene monomer unit	Propylene monomer unit	Vinyl acetate monomer unit
1	21			
2		14		
3			17	
4		20		
5		20.8		5.2
Total	21	54.8	17	5.2

* * *