



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
28th Session
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NR0440E1
(+ Annex)

O. Eng.

Brussels, 14 July 2003.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE WITH REGARD TO
THE ROTTERDAM CONVENTION

(Item III.A.5 on Agenda)

Reference documents :

NC0590E2, paragraph 38 (HSC/29 – Report)	NC0697E1 (HSC/31)
NC0634E1 (HSC/30)	NC0730E2, Annexes H/11 and N/1 (HSC/31 – Report)
NC0648E1 (HSC/30)	NR0441E1 (RSC/28)
NC0655E2, Annexes H/20 and M/8 (HSC/30 – Report)	NR0442E1 (RSC/28)
NS0080E2, Annexes A/17 and C/11 (SSC/18 – Report)	

I. BACKGROUND

1. At its 31st Session, the Harmonized System Committee continued to examine a proposal by the **EC** and the Interim Secretariat for the Rotterdam Convention concerning possible amendments to the Nomenclature with regard to the Rotterdam Convention, on the basis of the observations of the Scientific Sub-Committee (18th Session, January 2003).
2. The Delegate of **Canada** informed the Committee that his administration had already formally submitted its redrafted proposal to group all products covered by the Montreal Protocol and the Rotterdam Convention under one heading of the Nomenclature to the Secretariat for consideration at the Review Sub-Committee's 28th Session. Several delegates expressed their appreciation for this **Canadian** initiative which was welcomed as an attempt to contribute to the simplification of the HS Nomenclature.
3. Since this **Canadian** proposal was an alternative to the proposal with regard to the Rotterdam Convention which had recently been examined by the 18th Session of the Scientific Sub-Committee, one delegate suggested that both proposals be considered by the Review Sub-Committee at its next session. Based on the outcome of the deliberations in the Review Sub-Committee, the Committee could then decide at its next session in November which alternative to follow within the framework of the 2007 Nomenclature amendments. The Committee agreed to such a course of action.

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4. The Committee also agreed to forward the comments by **Argentina** regarding camphechlor, binapacryl and pentachlorophenol (distributed during the meeting as a non-paper in English only) to the Review Sub-Committee. In this connection, the Chairperson of the Scientific Sub-Committee reiterated that creation of new subheading 2903.52 for camphechlor had already been considered by the Scientific Sub-Committee to be inappropriate. He also explained that there was consensus in the Scientific Sub-Committee that binapacryl was classifiable in subheading 2916.39 under the current Nomenclature by application of Note 5 to Chapter 29. New subheading 2916.36 would therefore be more appropriate for its separate identification.
5. The Committee then agreed to proceed with a general consideration of the proposal set out in the Annex to Doc. NC0697E1. The **EC** Delegate expressed his agreement with the approach taken by the Scientific Sub-Committee since its intention was to simplify the proposed texts to the extent possible. In his view, the Committee should be able to accept all of the conclusions reached by the Scientific Sub-Committee as well as all of the Secretariat's proposed modifications referred to in paragraphs 31 to 33 of Doc. NC0697E1.
6. He supported the idea put forward by the Scientific Sub-Committee of creating a separate subheading in heading 38.08 for products subject to the Rotterdam Convention. He was in favour of the simplest possible text for such a new subheading and, therefore, preferred not to include an explicit list of these products directly in the subheading text but to introduce a new Subheading Note for this purpose.
7. He could also accept the Scientific Sub-Committee's suggestion to use the term "containing" in the proposed text for heading 38.08. However, he had some concerns as to whether this term would be interpreted uniformly. In order to avoid problems where a particular chemical substance was present in a product as an impurity, in a trace amount or as a residue, he suggested the possibility of defining the term "containing". In his view, setting up a minimal concentration threshold for these chemical substances could be a solution.
8. The Chairperson reiterated that the representative of the Interim Secretariat for the Rotterdam Convention had explained in the Scientific Sub-Committee that the possibility of setting up a minimum limit for when a substance could be regarded as an impurity could be addressed by the Rotterdam Convention as soon as it had entered into force. This was expected to occur during the second half of 2003.
9. Finally, the Committee agreed to send the proposed amendments to the Review Sub-Committee for examination.

II. SECRETARIAT COMMENTS

10. Based on the instructions of the HS Committee the Secretariat has elaborated on the possible amendments to the Nomenclature with regard to the Rotterdam Convention on the basis of the original proposal put forward by the **EC** and the Interim Secretariat for the Rotterdam Convention. The amended texts, along with the observations of the HS Committee and the recommendations of the Scientific Sub-Committee (18th Session, January 2003), are set out in the Annex to this document.

11. The Secretariat has restructured the proposed amendments to heading 38.08 with a view to creating a separate new subheading 3808.11 for products subject to the Rotterdam Convention. Following the preference expressed in the HS Committee (see paragraph 6 above), the Secretariat has also drafted a new Subheading Note 1 to Chapter 38 defining the scope of the new subheading.
12. On the basis of the Scientific Sub-Committee's recommendation (see paragraphs 10 and 12 of Annex A/17 to Doc. NS0080E2) to create separate headings for goods containing mercury compounds in Chapters 32, 33, 34 and 38, new draft headings 32.16, 33.08, 34.08 and 38.26 have also been incorporated in the Annex to this document. The Secretariat is suggesting insertion of these new headings at the end of each Chapter, thus establishing, together with the respective heading texts, their priority over other headings of the particular Chapter. Under such an arrangement, their priority would not need to be established by a Chapter Note. A similar approach is already used in the current Nomenclature, e.g., in Chapter 31 and heading 31.05 (see the last part of the heading text).
13. The original **EC** proposal presented a set of multiple amendments to the Chapters in question, separately identifying commodities containing mercury compounds. The creation of new headings 32.16, 33.08, 34.08 and 38.26 for goods containing mercury compounds would be a simplification of the original **EC** proposal. The two approaches are compared in the table below.

Creation of separate headings (Recommendation of the SSC)	Amendments based on the EC proposal
32.16	<ul style="list-style-type: none"> - Creation of new subheading 3206.44; - Amendments to subheadings 3207.10, 3207.20, 3207.30 and 3207.40 (creation of new subheading 3207.50); - Amendments to subheadings 3209.10 and 3209.90 (creation of new subheadings 3209.11 and 3209.91).
33.08	No alternative amendments.
34.08	<ul style="list-style-type: none"> - Amendments to subheadings 3401.11, 3401.19, 3401.20 and 3401.30 (creation of new subheadings 3401.12, 3401.14, 3401.21 and 3401.31); - Amendments to subheading 3404.90 (creation of new subheading 3404.91).
38.26	<ul style="list-style-type: none"> - Creation of new subheading 3815.13; - Amendments to subheading 3815.90 (creation of new subheading 3815.91); - Creation of new subheading 3824.81.

14. The texts of headings 32.16, 33.08, 34.08 and 38.26 would limit their scope to products of these particular Chapters, containing mercury compounds. The creation of these headings and their implementation would therefore presuppose that, at some point in the import procedure, it should be determined (by chemical analysis or certificate, for example)

for all products of Chapters 32, 33, 34 and 38 whether or not they contain mercury compounds.

15. In Chapter 32, some commodities can be based on mercury compounds, while others can have a different basis but at the same time can contain mercury compounds. Consequently, in the Annex to this document, the Secretariat has suggested two different texts for heading 32.16, either involving the term “containing” or the term “based on”, which have both been placed in square brackets. The Secretariat would leave it to the Sub-Committee to express its preference in this regard.
16. Furthermore, the Secretariat sees some merit in establishing a minimal concentration threshold in connection with the possible definition of the term “containing”. As was explained in the Scientific Sub-Committee by the representative of the Interim Secretariat for the Rotterdam Convention, the possibility of setting up a minimum limit for when a substance could be regarded as an impurity could be addressed by the Rotterdam Convention as soon as it has entered into force. The Sub-Committee should therefore consider what course of action should be taken vis-à-vis a possible definition of the term “containing”.
17. In conclusion, the Secretariat would ask the Sub-Committee to examine the possible amendments to the Nomenclature with regard to the Rotterdam Convention set out in the Annex to this document, including the two alternatives for amendments to Chapters 32, 33, 34 and 38 mentioned above. If the Sub-Committee has a preference for creating new headings for mercury containing compounds in each of these Chapters, the question as to whether these new headings should be further subdivided at subheading level and, if so, on what basis should also be considered.

III. CONCLUSION

18. The Sub-Committee is invited to examine the possible amendments to the Nomenclature with regard to the Rotterdam Convention set out in the Annex to this document, taking into account the Secretariat’s comments above.

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