



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

NR0144E1

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23<sup>rd</sup> Session  
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O. Eng.

Brussels, 23 February 2001.

POSSIBLE AMEMDMENTS TO THE NOMENCLATURE  
AND EXPLANATORY NOTES TO CHAPTER 24

(Item III.A.9 on Agenda)

Reference documents :

42.083 (HSC/21)  
NC0090E2, Annex IJ/1 (HSC/23 - Report)

NC0284E1 (HSC/26)  
NC0340E2, Annex G/2 (HSC/26 – Report)

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).
2. The Committee decided, by 22 votes to 8, that the non-aromatic cut tobacco in question should be classified in heading 24.03 (subheading 2403.10).
3. 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. The Delegate of Switzerland emphasized that Docs. 12.600 (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.
4. 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.

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5. 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.
6. Another delegate also pointed out that the 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.
7. 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. It was also 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".
8. When the matter was put to a vote, the Committee decided to reconfirm the classification of the non-aromatic cut tobacco in heading 24.03 (subheading 2403.10). To put this decision into effect, the Committee instructed the Secretariat to draft a Classification Opinion for examination by the next pre-session Working Party.
9. It was also 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.
10. 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 new document for this session.

## II. PROPOSALS FROM ADMINISTRATIONS

11. At the time of the preparation of this document, only the Australian Customs Service and the Customs Department of Jordan have responded to the above-mentioned circular letter.
12. Australia is of the view that non-aromatic cut tobacco is classified within heading 24.03. They consider that as the product is cut to size in narrow, short strips, it is processed beyond that which is allowed for in heading 24.01.

13. Furthermore, Australia is of the opinion that the wording of the present legal texts and the Explanatory Notes are satisfactory and therefore is of the opinion that no amendments are necessary.
14. Jordan proposes to delete the present subheadings to heading 24.03 and to replace them with the following :
- Semi-manufactured tobacco :
  - 2403.21 - - Cut to size into narrow short strips
  - 2403.29 - - Other
  - 2403.90 - Smoking tobacco, whether or not containing tobacco substitutes in any proportion.
15. In addition, Jordan suggests the introduction of the following exclusion in the Explanatory Note to heading 24.01 :

“The heading does not include semi-manufactured tobacco (**heading 24.03**).”

### III. SECRETARIAT COMMENTS

16. The proposal from Jordan would provide that all semi-manufactured tobacco products should be classified in heading 24.03. In this regard it may be recalled that the HS Committee, at its last session, classified a semi-manufactured product (“Basic Blended Strip (BBS)”) in heading 24.01. Furthermore, the Secretariat is of the opinion that this amendment would lead to a considerable transfer of other goods from heading 24.01, e.g., blended, stemmed/stripped and “cased” (“sauced” or “liquored”) tobacco (see the Explanatory Note to heading 24.01). The Secretariat, therefore, cannot support this proposal.
17. The Secretariat has already carried out a study with regard to improving the distinction criteria between unmanufactured tobacco of heading 24.01 and manufactured tobacco of heading 24.03.
18. As pointed out by the Secretariat in Doc. 42.083, paragraph 10, the question regarding the distinction between unmanufactured and manufactured tobacco, with a view to establishing a clear dividing line between CCCN headings 24.01 and 24.02, was examined in part between 1964 and 1968 by the CCC Nomenclature Committee.
19. One of the proposals considered was to define, in the Explanatory Notes, cut pieces of tobacco and tobacco refuse in terms of their sizes, as suggested by the “Fédération Belgo-Luxembourgeoise des Industries du Tabac (FEDETAB)” following a technical study. FEDETAB had suggested introducing a minimum size of, e.g., 50 mm for unmanufactured tobacco of heading 24.01. This proposal was, however, not accepted on the grounds that such a criterion would conflict with Members’ national regulations (see Docs. 12.776, 13.102, 13.303, 13.332, 13.428, Annex G to Doc. 12.600, Annex H to Doc. 13.000, and Annex F to Doc. 13.450).
20. Due to the increased number of Contracting Parties (the CCCN had 29 Contracting Parties in 1968), the Secretariat is of the opinion that finding an agreeable size criterion could be even more difficult today than in 1968. Introducing other legal criteria, such as a process based criterion (harvesting, curing, fermenting, blending, casing, flavouring, etc.), could be even more difficult. The Secretariat, therefore, wonders whether it is really necessary or

desirable to amend the legal texts. Furthermore, since only one administration has proposed to amend the legal texts, the Review Sub-Committee might be of the same opinion as the Secretariat.

#### IV. CONCLUSION

21. Taking the Secretariat comments in paragraphs 16 to 20 above into account, the Sub-Committee is invited to consider whether legal text amendments to Chapter 24 are necessary. If so, interested administrations are invited to submit their proposals to the Secretariat for consideration by the Sub-Committee at its next session.

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