



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
24th Session
-

NR0174E1
(+ Annexes I to III)
O. Eng.

Brussels, 30 July 2001.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE AND
EXPLANATORY NOTES TO CHAPTER 24

(Item III.A.6 on Agenda)

Reference documents :

42.083 (HSC/21)	NR0160E1 (RSC/23)
NC0090E2, Annex IJ/1 (HSC/23 - Report)	NR0161E1 (RSC/23)
NC0284E1 (HSC/26)	NR0164E1 (RSC/23)
NC0340E2, Annex G/2 (HSC/26 – Report)	NR0165E2, Annex C/9 (RSC/23 – Report)
NR0144E1 (RSC/23)	

I. BACKGROUND

1. At its 23rd 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). The Committee decided that the tobacco in question should be classified in heading 24.03 (subheading 2403.10).
2. At its 26th Session, the Harmonized System Committee re-examined the classification of this product on the basis of a Swiss reservation. After discussion, the Committee decided to reconfirm the classification of the non-aromatic cut tobacco in heading 24.03 (subheading 2403.10).
3. In this regard it was 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.
4. 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 document for the Review Sub-Committee's 23rd Session. The Secretariat received answers from Australia, Cyprus, Jordan, Mexico, Poland, Romania and Russia.

File No. 2653

5. When this topic was discussed at the Review Sub-Committee's 23rd Session, the Delegate of Poland emphasized that her administration's written proposal to amend the legal texts and the Explanatory Notes to Chapter 24 was intended to make the demarcation line between headings 24.01 and 24.03 more clear. In her mind, the current texts did not reflect present technology with regard to the production of semi-manufactured tobacco. Furthermore, she reminded the Sub-Committee that the recent reservations concerning the classification of "Non-aromatic cut tobacco" and "Basic Blended Strip (BBS)" clearly indicated that legal text amendments were necessary.
6. Another delegate was of the view that legal text amendments were not necessary and therefore favoured the status quo (as proposed by the Secretariat and the Australian Administration).
7. The EC Delegate indicated that he could also accept the status quo, but in his mind it was first necessary to determine whether the present situation could be improved. He agreed that the classification of intermediate tobacco products in the present Nomenclature created some problems. On the other hand, he had doubts as to certain elements in the Polish proposal, in particular with regard to new Notes 2 and 3 to Chapter 24 and the text of new subheading 2403.20. However, he agreed that this proposal could be used as a starting point to examine possible amendments to the legal texts. He therefore proposed that administrations should get in touch with their industry to find out whether the classification of intermediate tobacco products created problems and eventually to see whether legal text amendments were really necessary.
8. The Director pointed out that a possible solution to this problem might be to create one heading for unmanufactured products (with a limited coverage), another heading for finished products and a third heading for "other" products, including intermediate products. He also urged all administrations which were against legal amendments to inform the Secretariat, in view of the fact that such amendments might involve important tax consequences in many countries.
9. After this exchange of views, the Sub-Committee decided to return to this question at its next session. In the meantime, all administrations were asked to look into this question more carefully and to seek the views of their tobacco industry.

II. COMMENTS FROM ADMINISTRATIONS

10. In response to a letter sent to all Contracting Parties in early June 2000 by the Secretariat, at the time of preparation of this document the Secretariat had received comments from the Administrations of China, Cuba and Norway. These comments are set out in Annexes I to III, respectively, to this document.
11. The Chinese Administration proposed to amend the Explanatory Notes to heading 24.03 to include a reference to tobacco which is cut into narrow strips (with a corresponding exclusion in heading 24.01). The comments from the Cuban Administration seemed to relate to the classification of "Basic Blended Strip (BBS)" and not to the classification of "Non-aromatic cut tobacco" and were therefore not relevant in this regard.
12. The Norwegian Administration proposed to put the headings into a more logical order, starting with unmanufactured tobacco in heading 24.01, continuing with semi-manufactured tobacco products and other manufactured tobacco in headings 24.02 and 24.03 and finishing

with cigars, cheroots, cigarillos and cigarettes in heading 24.04, thus increasing the number of headings from three to four.

III. SECRETARIAT COMMENTS

Possible amendments to the Nomenclature

13. No administrations have informed the Secretariat that they are against legal amendments (see paragraph 8 above). On the other hand, only the Norwegian Administration has submitted a new proposal that includes legal amendments. Furthermore, the Polish Administration's proposal to amend the legal texts did not receive much support at the Sub-Committee's previous session. The Secretariat is therefore still uncertain as to the wish of the Sub-Committee in this regard.
14. The proposal from Norway includes a new heading (heading 24.02) for "semi-manufactured tobacco products", including mixtures, meaning that tobacco products would be transferred to this heading both from present headings 24.01 and 24.03. "Basic Blended Strip (BBS)", consisting of 75 % unmanufactured tobacco and 25 % reconstituted tobacco, which the HS Committee at its 26th Session (November 2000) classified in heading 24.01, would be transferred to this new heading. The Secretariat also believes that the non-aromatic cut tobacco (consisting of fermented, stemmed and stripped tobacco leaves that have been cut into narrow strips of varying lengths), presently classified in heading 24.03, would be classified in this new heading if the Norwegian proposal were accepted.
15. Another solution to provide for the classification of intermediate products, as proposed by the Director at the Sub-Committee's last session (see paragraph 8 above), might be to create one heading for unmanufactured products (with a limited coverage), another heading for finished products and a third heading for "other" products, including intermediate products. This proposal would also entail a transfer of goods, depending on the new limited coverage given to unmanufactured products, but this transfer would most likely be less considerable than the transfer of goods resulting from the Norwegian proposal.
16. The Secretariat is of the opinion that both the above-mentioned proposals necessitate the introduction of a clear-cut definition of "unmanufactured" in the legal texts. In Doc. 42.083 the Secretariat offered three options for consideration. For ease of reference these options are reproduced below :

A. Deleting the cutting criterion

17. One possibility is to delete the cutting criterion altogether from the scope of heading 24.01. This would seem a very straightforward approach and easy to apply. In the Secretariat's view, it would also be in conformity with the present legal texts which do not envisage cutting operations for the purposes of stemming or stripping. However, "trimming", which is also a kind of cutting operation, may continue to be allowed in heading 24.01 so as to allow finishing operations for the purposes of packing and marketing of unmanufactured tobacco.

B. Prescribing a size criterion

18. Another possibility is to retain cutting, but to specify a minimum dimension as was originally suggested by FEDETAB ("Fédération Belgo-Luxembourgeoise des Industries du Tabac). In this context, the Secretariat has noted that, according to the information

submitted by that organization, the size (length) of dried tobacco leaves may range from 3 cm to 80 cm, depending on the variety (see Doc. 13.102). If the Committee is inclined to specify a size criterion for unmanufactured tobacco (subheadings 2401.10 and 2401.20) which has been cut, then the Secretariat would suggest 2.5 or 3 cm as the minimum dimension when measured in any direction so as to avoid misclassification of smaller leaves which might have been trimmed. If the Committee is not in favour of such a quantitative criterion, it may consider amplifying the Explanatory Note to heading 24.01 with a view to clarifying the scope of the term "cut" so as to exclude finely cut strips without referring to a specific size.

C. Process based criterion

19. A third possibility could be to specify the processes allowed for unmanufactured tobacco of heading 24.01, e.g., harvesting, curing, fermenting, stemming/stripping, trimming, breaking, cutting (into any dimension or a specified minimum dimension), blending, "casing" ("saucing" or "liquoring"), drying, homogenising, flavouring, etc. This approach is not likely to solve the present difficulties in view of changes usually made in the order of processing by manufacturers depending on the technology employed for further manufacture (e.g., in the case of cigarettes).

Possible amendments to the Explanatory Notes

20. The Secretariat is of the view that proposing amendments to the Explanatory Notes at this stage, before a decision has been taken concerning amendments to the legal texts, would be premature.

IV. CONCLUSION

21. The Committee is invited to consider whether legal amendments to Chapter 24 are necessary to provide for the classification of intermediate tobacco products. If so, the Sub-Committee is invited to examine the Norwegian proposal set out in Annex III to this document, taking into account the Secretariat comments in paragraphs 13 to 20 above.

* * *

COMMENTS BY THE CHINESE ADMINISTRATION

“The Chinese administration would propose to amend Item (1) of the Explanatory Note to heading 24.01 to read :

- (1) **Unmanufactured** tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but semi-manufactured tobacco presented as regular narrow strip with a width of several millimeters and varying lengths are excluded (heading 24.03).

Consequently, a new Item (8) is proposed to be added to the Explanatory Note to heading 24.03 :

- (8) This heading also includes semi-manufactured tobacco which is cut into narrow strips, and other semi-manufactured tobacco products (other than those which are allowed in heading 24.01).”

* * *

COMMENTS BY THE CUBAN ADMINISTRATION

“Basic Blended Strip comes in different forms for each type of tobacco, and different types of tobacco are used for producing cigarettes; this is an international trade practice. For this reason, this type of tobacco is considered as being a raw material for the tobacco industry, and falls in heading 24.01.

This is the issue raised by US Customs, taking into account General Interpretative Rules 2 (b), 3 (b) and 6.

The Polish Customs Administration puts forward a particular case. The mixture imported into that country contains various types of tobacco as well as reconstituted tobacco, which diverges from the idea of “Basic” (BBS), which means that heading 24.01 is not applicable. The Polish Administration suggests including Basic Blended Strip in heading 24.03 covering Reconstituted Tobacco, which we consider incorrect. In the case of Basic Blended Strip recognised internationally as in the case in Poland, this heading would only apply to reconstituted tobacco.

We consider that type of mixture to be a semi-processed product, ready for use directly in the production of cigarettes, i.e., it is an intermediate product and not a raw material.

However, the Polish Customs Administration can consider it differently in its national Customs Nomenclature.”

* * *

COMMENTS BY THE NORWEGIAN ADMINISTRATION

“Please find attached a proposal from the Norwegian Customs Administration regarding amendments to Chapter 24 of the Harmonized System.

The main idea is to solve the problems regarding the classification of semi-manufactured tobacco products that have been discussed in the HS Committee.

In our opinion we also believe that the proposal will result in a more natural order of the “listing” of the Chapter’s product coverage. Today it starts with raw, or unmanufactured, tobacco in heading 24.01, then heading 24.02 covers the products that have undergone the furthest processing step, namely cigarettes, etc., before ending up in heading 24.03, which among other products also cover tobacco essences and reconstituted tobacco. The latter products may be used in the manufacture of products of heading 24.02, and in our opinion it would have been more natural to classify them in a heading before 24.02 in numerical order.

In order to facilitate this idea, we have created a new heading 24.02 for semi-manufactured products and tobacco extracts and essences, and have moved and renumbered present heading 24.02 as 24.04. Smoking tobacco, chewing tobacco and snuff remain in heading 24.03.

The proposal is shown in the annexes. Changes are underlined. Lined through text is to be deleted.”

Amendments to the Nomenclature

CHAPTER 24

TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

Chapter Note.

1.- This Chapter does not cover medicinal cigarettes (Chapter 30).

24.01 – UNMANUFACTURED TOBACCO, ALSO CASED WITH A LIQUID TO PREVENT MOULD AND DRYING AND ALSO TO PRESERVE THE FLAVOUR, BUT NOT MIXED WITH OTHER PRODUCTS; TOBACCO REFUSE.

2401.10 - Tobacco, not stemmed/stripped

2401.20 - Tobacco, partly or wholly stemmed/stripped

2401.30 - Tobacco refuse

24.02 – SEMI-MANUFACTURED TOBACCO PRODUCTS; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES.

2402.30 - Tobacco extracts and essences

- Other :

2402.91 - - "Homogenised" or "reconstituted" tobacco

2402.99 - - Other

24.03 – OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES, OTHER THAN PRODUCTS OF HEADING 24.04; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES

2403.10 - Smoking tobacco, whether or not containing tobacco substitutes in any proportion

2403.90 - Other

24.04 – CIGARS, CHERROOTS, CIGARILLOES AND CIGARETTES, OF TOBACCO OR OF TOBACCO SUBSTITUTES.

2404.10 - Cigars, cheroots and cigarillos, containing tobacco

2404.20 - Cigarettes containing tobacco

2404.90 - Other

Amendments to the Explanatory Notes

CHAPTER 24

TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

Chapter Note.

1.-This Chapter does not cover medicinal cigarettes (Chapter 30).

GENERAL

Tobacco is obtained from various cultivated varieties of the genus *Nicotiana* of the Solanaceae family. The size and shape of the leaves differ from one variety to another.

The harvesting method and curing process depend on the variety (type) of tobacco. The plant may be cut whole, at average maturity (stalk cutting), or the leaves may be picked separately, according to their state of maturity (priming). Thus, tobacco may be cured either as whole plants (on the stalk) or as separate leaves.

The various methods of curing are sun curing (in the open air), air curing (in closed sheds with free circulation of air), flue curing (in hot air flues), or fire curing (with open fires).

Before packing for shipment, the dried leaves are treated in order to ensure their preservation. This may be done by controlled natural fermentation (Java, Sumatra, Havana, Brazil, Orient, etc.) or by artificial re-drying. This treatment, and the curing, affect the flavour and aroma of tobacco, which undergoes spontaneous ageing after packing.

Tobacco so treated is packed in bundles, bales (of various shapes), in hogsheads or in crates. When so packed, the leaves are either aligned (Orient) or tied in hands (several leaves tied together with a band or with another tobacco leaf), or simply left as loose leaves. They are always tightly compressed in order to ensure preservation.

In some cases, in addition to (or instead of) fermentation, flavouring or moistening substances are added (casing) in order to improve the aroma or keeping qualities.

This Chapter covers not only unmanufactured and manufactured tobacco but also manufactured tobacco substitutes which do not contain tobacco.

24.01 – UNMANUFACTURED TOBACCO, ALSO CASED WITH A LIQUID TO PREVENT MOULD AND DRYING AND ALSO TO PRESERVE THE FLAVOUR, BUT NOT MIXED WITH OTHER PRODUCTS; TOBACCO REFUSE.

2401.10 - Tobacco, not stemmed/stripped

2401.20 - Tobacco, partly or wholly stemmed/stripped

2401.30 - Tobacco refuse

This heading covers :

- (1) **Unmanufactured tobacco** in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but **not** tobacco ready for smoking).

Tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered in this heading.

- (2) **Tobacco refuse**, e.g., waste resulting from the manipulation of tobacco leaves, or from the manufacture of tobacco products (stalks, stems, midribs, trimmings, dust, etc.).

The heading **does not cover** unmanufactured tobacco mixed with other products than a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour.

24.02 - SEMI-MANUFACTURED TOBACCO PRODUCTS; "HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES.

2402.30 - Tobacco extracts and essences

- Other :

2402.91 - - "Homogenised" or "reconstituted" tobacco

2402.99 - - Other

This heading covers :

- (1) **Semi-manufactured tobacco products not elsewhere specified or included.** Unmanufactured tobacco mixed with other products than a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered by this heading.
- (2) **"Homogenised" or "reconstituted"** tobacco made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular

sheets or strip. It can be either used in the sheet form (as a wrapper) or shredded/chopped (as a filler).

- (3) **Tobacco extracts and essences.** These are liquids extracted from moist leaves by pressure, or prepared by boiling waste tobacco in water. They are used mainly for the manufacture of insecticides and parasiticides.
- (4) **Tobacco compressed or liquored for making snuff.**

24.03 - OTHER MANUFACTURED TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES, OTHER THAN PRODUCTS OF HEADING 24.04; ~~"HOMOGENISED" OR "RECONSTITUTED" TOBACCO; TOBACCO EXTRACTS AND ESSENCES~~

2403.10 - Smoking tobacco, whether or not containing tobacco substitutes in any proportion

2403.90 - Other

This heading covers :

- (1) **Smoking tobacco, whether or not containing tobacco substitutes in any proportion**, for example, manufactured tobacco for use in pipes or for making cigarettes.
- (2) **Chewing tobacco**, usually highly fermented and liquored.
- (3) **Snuff**, more or less flavoured.
- (4) **Manufactured tobacco substitutes**, for example, smoking mixtures not containing tobacco. However, products such as cannabis are excluded (heading 12.11).

The heading **does not cover** :

- (a) Nicotine (the alkaloid extracted from tobacco) (**heading 29.39**).
- (b) Insecticides of **heading 38.08**.

24.04 - CIGARS, CHERROOTS, CIGARILLOES AND CIGARETTES, OF TOBACCO OR OF TOBACCO SUBSTITUTES.

2404.10 - Cigars, cheroots and cigarillos, containing tobacco

2404.20 - Cigarettes containing tobacco

2404.90 - Other

This heading is restricted to cigars (wrapped or not), cheroots, cigarillos and cigarettes, made of tobacco or of tobacco substitutes. Other smoking tobacco, whether or not containing tobacco substitutes in any proportion, is **excluded (heading 24.03)**.

This heading covers :

(1) **Cigars, cheroots and cigarillos, containing tobacco.**

Such products may be made wholly of tobacco or of mixtures of tobacco and tobacco substitutes, regardless of the proportions of tobacco and tobacco substitutes present in the mixture.

(2) **Cigarettes containing tobacco.**

Apart from cigarettes containing only tobacco, this heading also includes those made from mixtures of tobacco and tobacco substitutes, regardless of the proportions of tobacco and tobacco substitutes in the mixture.

(3) **Cigars, cheroots, cigarillos and cigarettes of tobacco substitutes**, for example, "cigarettes" ("smokes") made from specially processed leaves of a variety of lettuce, containing neither tobacco nor nicotine.

The heading **does not cover** medicinal cigarettes (**Chapter 30**). However, cigarettes containing certain types of products specifically formulated to discourage the habit of smoking but which do not possess medicinal properties remain classified in this heading."
