



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
28th Session
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NR0412E1
(+ Annex)

O. Eng.

Brussels, 4 August 2003.

POSSIBLE CREATION OF A NEW SUBHEADING NOTE TO CHAPTER 39
WITH REGARD TO MULTILAYERED SHEETS OF PLASTICS
(PROPOSAL BY THE CANADIAN ADMINISTRATION)

(Item III.A.11 on Agenda)

Reference documents :

NR0370E1 (RSC/27)
NR0400E3, Annexes D/5 and F/13 (RSC/27 – Report)

I. BACKGROUND

1. On 20 December 2002 the Secretariat received a proposal from the Canadian Administration to create a new Subheading Note to Chapter 39 with regard to multi-layered sheets of plastics. The matter was submitted to the Review Sub-Committee for consideration.
2. At its 27th Session, at the request of the Canadian Delegate, the Review Sub-Committee, agreed to undertake a preliminary discussion on the proposed new Subheading Note to Chapter 39.
3. The Canadian Delegate indicated that his administration would shortly submit its written responses to the questions put forward by the Secretariat in Doc. NR0370E1. He invited other delegations to provide their views in this connection to his administration, with a view to addressing them in the Canadian submission.
4. The EC Delegate expressed some doubts with regard to the expression “unless the context otherwise requires”, as used in the proposed Subheading Note 2. He wondered whether the provisions of current Subheading Note 1 to Chapter 39 would be a context which otherwise required.

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5. The Chairperson, while wondering whether the expression “single plastics” would also cover a “single copolymer”, concluded that the issue would be further discussed at the Sub-Committee’s next session. Pending these further discussions, the proposed amendment to Chapter 39 was placed in square brackets and it is reproduced in the Annex to this document.
6. On 12 June 2003, the Secretariat received the following Note from the **Canadian** Administration concerning questions raised at the previous Review Sub-Committee session.

II. NOTE FROM CANADA

“The Canadian responses to the questions put forward by the Secretariat in Doc. NR0370E1”

7. In paragraph 5 (Doc. NR0370E1), the Secretariat questioned the need for the proposed amendment, as it felt that laboratory analysis would be required for each shipment.
8. The **Canadian** proposal would not change the need for laboratory analysis. In fact, it may simplify the analysis. Currently, all headings in Sub-Chapter I of Chapter 39 and the majority of subheadings in the Chapter identify goods by polymer class. Notes 4 and 5, and Subheading Note 1 specify how polymers and polymer-based plastics are to be classified in headings and subheadings on the basis of the monomer units present and their relative amounts. Consequently, there is a current requirement for information on the relative amounts of monomer units in the majority of the goods of Chapter 39. In the absence of detailed technical information, the information on the monomer units could only be determined by laboratory analysis.
9. Currently, GIR 3 (b) (essential character) is required to classify multi-component plastic goods. The essential character measure (e.g., bulk, weight, role) must be selected. The use of GIR 3 (b) may require some or all of the following information depending on the essential character measure chosen :
 - the identity and relative weights of the different plastic components;
 - the use of the product and the functions of the different components relative to the use the product; and
 - in the component that represents the essential character of the product, the identity and relative weights amounts of the monomer units. Note that this component may be made from copolymers or polymer blends.
10. While the **Canadian** proposal still requires the analysis of the products, the determination of the relative amounts of monomer units in the total product is simpler since it does not necessarily require the separation of the components. All of the polymer components can be analysed together.
11. We conclude that the use of GIR 3 (b) actually complicates the classification of multi-component plastics as compared to the **Canadian** proposed subheading note.

12. In paragraph 6 (Doc. NR0370E1), the Secretariat states a concern about the complexity of the proposed subheading text. **Canada** agrees that the text is complex but it is of similar complexity to very similar text in Note 4 and Subheading Note 1 to Chapter 39.
13. The last part of the paragraph, the Secretariat has concerns about the phrase “of single plastics of polymers composed of the same monomer units in the same proportions”. It should be pointed out that there is no comma after the phrase “in the same proportions” meaning that the latter phrase can only modify the preceding phrase, i.e., “of the same monomer units”. In this fashion, the monomer units in the theoretical single plastics must be in the same proportion as those of the total monomer units in the multi-component plastic product.
14. Any confusion can be explained by way of a simple example :
- layer 1 : Poly (A); 40% monomer unit A
layer 2 : Poly (B); 60% monomer unit B
- The product is classified in the same subheading as a single-component plastic good of a theoretical A-B copolymer composed of 40% monomer unit A and 60% monomer unit B.
15. **Canada** has committed to write an Explanatory Note to explain the operation of the Note.
16. In paragraph 7 (Doc. NR0370E1), the Secretariat has some concerns about the expression “except where the context otherwise requires”. The expression would operate in the same manner as the identical expression in Note 4 to Chapter 39. Note 4 relates to the classification of copolymers (*inter alia*) within the headings of Chapter 39. However, where headings do not name goods by chemical class (e.g., headings 39.17 - tubes, pipes and hoses, and 39.24 - tableware), the note becomes meaningless. Specifically, the context does not require the use of the note.
17. The Secretariat has concerns about the operation of the proposed note on heading 39.21 vis-à-vis the single dash subheadings for “cellular” and “other”. These two headings do not relate to plastics of different polymer classes; rather they relate to different physical forms of plastics. The context would prevent the use of the proposed note on this classification situation.
18. The classification of composites of cellular plastics and compact plastics would require the use of GIR 3 (b).
- Response to the EC Delegate’s concerns with regard to the expression “unless the context otherwise requires”, as used in the proposed Subheading Note 2. He wondered whether the provisions of current Subheading Note 1 to Chapter 39 would be a context which otherwise required.**
19. The Secretariat has stated in paragraph 3 of Doc. NR0370E1 that a multi-component plastic would be classified by GIR 3 (b) and not by Subheading Note 1. If Subheading Note 1 does not apply under the current classification regime, it could not be considered to have an overriding context under proposed Subheading Note 2.

Response to the RSC Chairperson's question of whether the expression "single plastics" would also cover a "single copolymer".

20. Based on Note 1 to Chapter 39, "plastics" are the materials of headings 39.01 to 39.14 that can be shaped. Based on the coverage of headings 39.01 to 39.14 as defined in Notes 3, 4 and 5, the plastics of Chapter 39 may be based on polymers (including copolymers), chemically modified polymers or polymer blends. Clearly, a single-component plastic article based on a "single copolymer" would be a single plastic."

III. SECRETARIAT COMMENTS

21. The **Canadian** Administration has suggested introducing a new Subheading Note 2 to Chapter 39 in order to clarify the classification of multi-layered sheets of plastics as well as of other products of Sub-Chapter II of Chapter 39, composed of two or more components made of plastics. The comments presented in the Note by **Canada** reproduced above relate to the **Canadian** proposal set out in the Annex to this document.
22. The Secretariat would like to reiterate that multi-layered sheets of plastics should currently be classified at heading level by application of GIR 1, e.g., in heading 39.20 if the sheets of plastics meet the terms of that heading. At subheading level, GIR 6 should be applied. As the Secretariat understands it, within the framework of this rule, in the first instance, the subheadings of a heading should be determined according to the terms of those subheadings and related Subheading Notes. *Mutatis mutandis*, Rules 1 to 5 should also be applied.
23. Thus, in the case of polymers (including copolymers), chemically modified polymers, polymer blends, and products of Sub-Chapter II made of the foregoing, Subheading Note 1 to Chapter 39 should be applied in accordance with GIR 6. However, multi-layered sheets of plastics would be, for the purpose of GIR 6, considered to be composite goods having components of various types of plastics. Consequently, in order to determinate the proper subheading for a composite product, GIRs 2 (b) and 3 (a), (b) or (c), as the case may be, should be applied at subheading level.
24. As pointed out by **Canada** in paragraph 9 above, the application of GIR 3 (b) for multi-layered sheets of plastics requires, e.g., the type (identity), relative quantities, properties and/or functions of the plastic materials forming the individual layers to be identified, in order to determine the component (layer) which gives the product its essential character.
25. At that stage, Subheading Note 1 to Chapter 39 should be applied to the layer giving the sheet its essential character. Since heading 39.20 has no subheading named "Other" at the one-dash subheading level, the applicable subheading is to be determined on the basis of Subheading Note 1 (b). Hence, for the classification of multi-layered sheets of plastics at subheading level, GIRs 6, 2 (b), 3 (b) and Subheading Note 1 should be applied in the stated sequence.
26. The architecture of headings 39.15 to 39.26 at one-dash or two-dash subheading level refers in most cases to a particular type of plastics (except for headings 39.19, 39.22 and 39.24 to 39.26). In those series of subheadings, the subheading named "Other" occurs only in the series of the two-dash subheading 39.20.5. This implies that Subheading Note 1 (a) to Chapter 39 would only be used at the two-dash subheading level (at the end of the sequence

referred to in paragraph 25 above) for multi-layered sheets which have the “essential” layer made of acrylic polymers. In all other cases, Subheading Note 1 (b) to Chapter 39 would be applied at subheading level.

27. It should be noted that in this scenario, the subheading is determined only on the basis of the constituent monomer units of the polymers forming the layer that gives the product its essential character.
28. If proposed new Subheading Note 2 to Chapter 39 were to be introduced, it would provide specific guidance for the classification of goods composed of two or more components of plastics at subheading level. As the Secretariat understands the intention of the Canadian proposal, the sequence of legal provisions to determine the subheading would then include GIR 6, Subheading Note 2 to Chapter 39 and Subheading Note 1 to Chapter 39. Proposed new Subheading Note 2 would stipulate that the subheading should be determined on the basis of the constituent monomer units of a fictitious polymer composed of all monomer units of all types of polymers occurring in the product, regardless the component (layer) in which they occur. Subsequently, the subheading for the fictitious polymer would be determined according to Subheading Note 1.
29. In the Secretariat’s view, the Canadian proposal would enable classification based on quantitative criteria, i.e., on the content of all monomer units occurring in the composite product as a whole, with no need to make a material distinction between individual components. On the other hand, it would disregard the specific characteristics and functions of individual components (layers), in which case, the spirit of GIRs 2 (b) and 3 generally applied for the classification of composite goods in the HS Nomenclature would not be followed.

IV. CONCLUSION

30. The Sub-Committee is invited to examine the proposal by the Canadian Administration to create a new Subheading Note to Chapter 39 with regard to multi-layered sheets of plastics, as set out in the Annex to this document, taking into account the Note by Canada and the Secretariat’s comments above.

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