



HARMONIZED SYSTEM  
COMMITTEE

-  
26<sup>th</sup> Session

NC0284E1

O. Eng.

Brussels, 20 September 2000.

CLASSIFICATION OF NON-AROMATIC CUT TOBACCO

(RESERVATION BY SWITZERLAND)

(Item VII.2 on Agenda)

Reference documents :

42.083 (HSC/21)  
NC0090E2, Annex IJ/1 (HSC/23 - 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. After discussion, 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. By its letter of 30 July 1999, the Swiss Customs Administration asked the Secretary General of the WCO to refer the Committee's decision to the Council, in accordance with the provisions of Article 8.2 of the HS Convention.
4. The Council, at its 95<sup>th</sup>/96<sup>th</sup> Sessions in July 2000, considered the Swiss reservation and decided to refer the question of the classification of non-aromatic cut tobacco back to the Committee for re-examination.
5. On 13 July 2000, the Secretariat received the following Note from the Swiss Administration putting forward arguments in support of the reservation it had entered in respect of the decision of the Harmonized System Committee (23<sup>rd</sup> Session) concerning the classification at issue. This note is reproduced below.

File No. 2653

## II. MEMORANDUM FROM SWITZERLAND

### "Classification of non-aromatic cut tobacco (Doc. NC0090E2/IJ/1)

6. Further to Switzerland's letter of 30 July 1999, below are the reasons which led the Swiss Customs Administration to oppose to classification in HS subheading 2403.10.
7. At its 23<sup>rd</sup> Session, the HSC decided on the classification of non-aromatic cut tobacco. By 22 votes to 8 this product was classified in subheading 2403.10. The Secretariat was instructed to prepare a Classification Opinion (see Annex IJ/1 to Doc. NC0090E2). The Swiss Administration cannot accept this classification, because non-aromatic cut tobacco should be classified in heading 24.01.
8. The product at issue, described in Doc. 42.083 (first paragraph), and a sample of which was shown to delegations at the HSC's 23<sup>rd</sup> Session, is a special mixture of unmanufactured tobacco. The tobacco leaves, after being mixed, fermented, stemmed/stripped and cut into narrow (about 1 mm wide) strips, have been cased ("sauced") but not subjected to any other treatment except for the purposes of preservation or maintaining their flavour. This non-aromatic cut tobacco is used for the industrial production of cigarettes, after homogenization and flavouring (final casing).
9. The principal question that arises is therefore whether this tobacco product is classifiable in heading 24.01 or heading 24.03.

**Heading 24.01 covers "unmanufactured tobacco; ...".**

**Heading 24.03 covers "other manufactured tobacco and manufactured tobacco substitutes; ...".**

10. The Explanatory Note to heading 24.01 (page 189) stipulates that this heading covers "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)".
11. "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".
12. Heading 24.03, on the other hand, covers "**Smoking tobacco, whether or not containing tobacco substitutes in any proportion**, for example, manufactured tobacco for use in pipes or for making cigarettes" (Explanatory Note to heading 24.03, item (1), page 190).
13. To have a clear understanding of the scope of heading 24.01 it is necessary to look at the history of the Explanatory Note to that heading. The Nomenclature Committee (former CCCN) considered, by a substantial majority, that the processing called "**casing**" did not give tobacco leaves the character of manufactured tobacco of heading 24.02 (CCCN), now 24.03 (HS) (see appended Docs. 11.878, 12.324 and 12.600 (Annex B)). Following this decision the Secretariat was instructed to make a study on the distinction between tobacco of heading 24.01 and tobacco of heading 24.02 (CCCN), now 24.03 (HS) (see appended Docs. 12.776, 13.000 (Annex H), 13.102, 13.303, 13.332 and 13.428). In particular, it took the view that "casing" did not exclude tobacco from heading 24.01 provided that its purpose was essentially to prevent mould and drying, and hence preserve the tobacco's flavour.

14. At its 16<sup>th</sup> Session, the Nomenclature Committee confirmed that simple "casing" did not exclude such tobacco from classification in heading 24.01. The Committee decided not to define cut tobacco in the Explanatory Notes in terms of size, etc. (see Doc. 13.450, Annex F, appended herewith), and therefore never took into consideration heading 24.02 (CCCN), now 24.03 (HS), for the classification of cut tobacco.
15. In Switzerland's opinion, the interpretations referred to in paragraphs 10 to 14 above relate to the term "unmanufactured" (Fr. "non fabriqués") in the text of heading 24.01. According to the "Grand Larousse" dictionary, the French word "fabrique" (factory) means an "industrial establishment in which prepared raw materials are converted into manufactured products ready for distribution to the trade". It is true that the product at issue is prepared tobacco, but it is not a product in the sense of the term "manufactured" (Fr. "fabriqué") nor of heading 24.03. In this context, it is important to realize that the scope of heading 24.01 covers both "produits bruts" (raw/rough products) and "produits non fabriqués" (unmanufactured products). It is clear from these provisions that the products of heading 24.01 are used to manufacture cigarettes or other ready-to-use products.
16. It is true that non-aromatic cut tobacco can be smoked. That is also true of dried leaves of raw/rough tobacco (Fr. "tabac brut") and even of other dried plants. But that is not really the issue. The distinction proposed in the Explanatory Notes (classification in heading 24.01 provided that they are "**not** tobacco ready for smoking" provides the only logical distinction between tobacco of heading 24.01 and tobacco of heading 24.03. The products of heading 24.03 are prepared and packed such as to meet all the requirements of the final consumer, including those of taste and flavour, whereas this is not true of raw/rough tobacco of heading 24.01.
17. As regards heading 24.01 of the CCCN, the legal text and Explanatory Note were transferred as such (unchanged) to the corresponding parts of the Harmonized System. In the Explanatory Note to heading 24.01 of the HS, the second paragraph was added to take account of a Classification Opinion in the CCCN concerning "cased" tobacco leaves (see paragraph 13 above). Given that these provisions and their interpretations have been in force for some 35 years they cannot be disregarded. In accordance with the principle of good faith, there is no justification for any other interpretation of the existing text.
18. It follows from the foregoing that even when cut into strips and treated to prevent mould and preserve its flavour ("casing"), tobacco is to be regarded as unmanufactured tobacco of heading 24.01. The product at issue has not undergone any other processing than that permitted by the Explanatory Note to heading 24.01. This product is not tobacco ready for smoking, since it does not have the flavour, packing or presentation that would be acceptable to the final consumer as smoking tobacco. That is why this product must be classified in heading 24.01 in accordance with GIR 1.
19. Furthermore, the Swiss Administration believes that classification in a heading other than heading 24.01 would contravene the principle of equal rights. At its 25<sup>th</sup> Session (October 1999), the HSC classified in heading 24.01 an intermediate preparation known as "Basic Blended Strip (BBS)". This was a mixture consisting of 75 % unmanufactured tobacco of heading 24.01 and 25 % "reconstituted" tobacco of heading 24.03. This product needs only a single cutting process before it can be used for making cigarettes. The Committee took the view that mixtures were not in themselves excluded from heading 24.01. Given that the unmanufactured tobacco provided the greater weight and bulk of the product it was agreed to classify the "BBS" mixture in heading 24.01, by 23 votes to 5, in pursuance of

General Interpretative Rules 2 (b), 3 (b) and 6. However, it should be noted that this decision was the subject of a reservation under Article 8.2 of the HS Convention and has therefore not yet entered into force.

20. By contrast, non-aromatic tobacco cut into strips is a mixture consisting of 100 % unmanufactured tobacco (Fr. "tabac brut"). Classification elsewhere than in heading 24.01 would be in contradiction with the decision referred to in paragraph 19 above. Thus, on the one hand, classification in heading 24.01 was accepted for a mixture – which is, moreover, a preparation in which the proportions of the different components were deliberately established as 75 % unmanufactured tobacco leaves (heading 24.01) and 25 % reconstituted tobacco (heading 24.03) for the purpose of making cigarettes – whereas, on the other hand, a mixture of 100 % unmanufactured non-aromatic cut tobacco has been expressly excluded from that heading. In classifying BBS for making Marlboro cigarettes in heading 24.01 the Committee took the view that the term "unmanufactured" (Fr. "non fabriqués") in the legal text of heading 24.01 should be interpreted broadly. If this choice were to be confirmed when the HSC re-examines the matter, the conclusion could be drawn that intermediate products fall in heading 24.01, which should also be the case for unmanufactured tobacco cut into strips and not yet having the flavour making it acceptable to the final consumer.
21. The principle of good faith should rule out different classifications for non-aromatic cut tobacco and "BBS" tobacco. Both sorts of tobacco are intended for making cigarettes. Neither is ready for smoking. They should therefore be classified in the same heading. Taking ad hoc decisions that are isolated or even contradictory would tend to introduce a degree of inconsistency in the interpretation of the legal texts of Chapter 24. If such cases increase in number, which is highly likely, the HS Committee may find itself in situations for which no technical solution could meet the need for clarity in classification nor correspond to the actual distinctions made in industry. Such a path could only lead to random and unjust management of the Nomenclature, damaging not only the efficiency of Customs administrations but also the reputation of the WCO."

### III. ARGUMENTS PUT FORWARD AT THE 23<sup>RD</sup> SESSION

22. When this question was discussed by the Committee (23<sup>rd</sup> Session), many delegates were of the view that such tobacco had to be classified in heading 24.03. It was stated that, since this product was an intermediate product in the cigarette manufacturing process, which only had to be subjected to homogenisation and flavouring prior to finalization, it could not be regarded as "unmanufactured tobacco" of heading 24.01.
23. In this respect one delegate stated that tobacco with all or almost all veins removed, initially moistured, comminuted, mixed and initially cased should be classified in heading 24.01, while tobacco subjected to any other treatment (even if not ready for smoking), should be classified in heading 24.03. Another delegate argued that tobacco cut into narrow strips for a specific manufacturing process had to be regarded as "manufactured tobacco" of heading 24.03.
24. Other delegates were of the view that the tobacco in question was cut into narrow strips only for the facilitation of transport. Since it was not put up for retail sale, and since "sauced" and "liquored" tobacco were mentioned as permitted processes in the Explanatory Note to heading 24.01, this product should be classified in heading 24.01. In this respect it was also mentioned that if such products were excluded from heading 24.01, that heading would become almost empty.

25. Some delegates expressed concern as to the "ready for smoking" criterion mentioned in the Explanatory Note to heading 24.01 as a dividing line between headings 24.01 and 24.03. This criterion was misleading, because it suggested that intermediate products should be classified in heading 24.01. One delegate also expressed difficulties in creating a definitive demarcation between headings 24.01 and 24.03.

#### IV. SECRETARIAT COMMENTS

26. The Secretariat has already expressed its view with regard to this issue in Doc. 42.083 and leaves it to the Committee to decide on the classification of the non-aromatic cut tobacco under consideration.
27. With regard to the classification of a tobacco mixture known as "Basic Blended Strip" as mentioned in paragraph 20 above, the Secretariat would like to point out that it will be re-examined at the 26<sup>th</sup> Session under Agenda Item VII.6 (Reservation by Poland).

#### IV. CONCLUSION

28. The Committee is invited to re-examine the classification of non-aromatic cut tobacco as described in Doc. 42.083, taking into account the comments by the Swiss Administration in paragraphs 6 to 21 above and the arguments put forward at the 23<sup>rd</sup> Session in paragraphs 22 to 25 as well as the comments by the Secretariat in paragraph 26.
29. The Committee is also invited to indicate what further action should be taken with regard to this matter. In this context the Committee is reminded that the Harmonized System Committee, at its 23<sup>rd</sup> Session (May 1999), instructed the Secretariat to study the Explanatory Notes to Chapter 24 in order to modernise them on the basis of additional information and technical details to be submitted by administrations.
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