



HARMONIZED SYSTEM
COMMITTEE

-
28th Session
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NC0464E1
(+ Annexes I and II)
O. Eng.

Brussels, 5 October 2001.

CLASSIFICATION OF CERTAIN CHEMICAL PRODUCTS RELATING
TO THE CHEMICAL WEAPONS CONVENTION
(Item VII.3 on Agenda)

Reference documents :

NS0021E1 (SSC/16)	NC0367E1 (HSC/27)
NS0031E1 (SSC/16)	NC0430E2, Annexes E/1, E/3 and Q/3 (HSC/27 – Report)
NS0034E2, Annexes A/6 and C/4 (SSC/16 – Report)	
NC0365E1, paragraphs 19 and 20 (HSC/27)	

I. BACKGROUND

1. In response to a request made by the Organization for the Prohibition of Chemical Weapons (OPCW) in November 2000, to confirm the HS codes incorporated in the OPCW Handbook on Chemicals, May 2000, this matter was placed on the Agenda of the 16th Session of the Scientific Sub-Committee (SSC) 15 January 2001.
2. The SSC examined the classification of the 932 chemicals enumerated in Part A of the OPCW Handbook and submitted its observations to the 27th Session (May 2001) of the Harmonized System Committee for its approval. (The Mexican Administration correctly indicated in its letter of 24 July 2001 that the total number of chemicals appearing in the OPCW Handbook should be 932 and not 929, as reflected in previous working documents). Furthermore, in order to reflect the classifications under the HS 2002 version, the Secretariat prepared another document (see Doc. NC0367E1, Annex V) for examination by the Committee.
3. At the 27th Session of the Committee, one delegate indicated that certain chemical products in the OPCW Handbook might not be covered by the Chemical Weapons Convention (CWC). Furthermore, at the request of another delegate, the Committee agreed to postpone this item and examine the whole list at its next session in November 2001. Administrations were invited to send the Secretariat their comments on this question by 30 June 2001 at the latest (see Annexes E/1 and Q/3 to Doc. NC0430E2).

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4. The Committee also instructed the Secretariat to get in touch with the OPCW to confirm whether or not the chemical products marked with an “*” in, Annex Q/3 to Doc. NC0430E2, were covered by the Chemical Weapons Convention.
5. The Committee further decided to examine Annex V of Doc. NC0367E1 at its next session along with the above-mentioned chemicals from the OPCW Handbook.
6. On 24 July 2001, the Secretariat received a letter from the OPCW Secretariat explaining the current situation. The Secretariat also received comments from some administrations.

II. COMMENTS FROM THE OPCW SECRETARIAT

7. “With regard to the report on the 27th Session of the HSC, the main concern (as expressed by one delegate at the session) seems to be the question of whether some compounds are, indeed, covered in the schedules in the Annex on Chemicals of the Chemical Weapons Convention.
8. The chemicals in question are some amine-functional salts or adducts, some of which are included in the draft Handbook under Schedule Numbers 1A03 and 1A06 and under Schedule 2B12. The OPCW Secretariat has decided to include in the Handbook on Chemicals those salts of amine-functional chemicals identified with the aid of a search of the CAS registry and other databases as having some possible commercial potential. The issue of whether these chemicals are (or should be) considered to be included under the scheduled chemicals is a matter that has been debated for some time in various policy making organs of the OPCW, with different views having been expressed and no firm decision having been taken to date. The view expressed at the HSC Session is indicative of this situation.
9. In the case of the chemicals listed under Schedule 2B12 (page 43 of Annex Q/3 to Doc. NC0430B2), there can be no dispute about the placement of the salts on the list, since the Convention refers in the Annex on Chemicals under Schedule B12 to “N,N-Dialkyl (Me, Et, n-Pr or l-Pr) aminoethane-2-thiols **and corresponding protonated salts**” (our emphasis).
10. The more contentious entries are the salts included in the Handbook under Schedule 1A03 and 1A06 (paragraphs 6 and 8 of Annex Q/3). Whereas some of our Member States have expressed reservations about whether or not the salts should be considered to be included in the lists of scheduled chemicals, some other Member States have actually included such compounds in information submitted to the OPCW in their declarations. We wish to emphasise, however, that the Handbook on Chemicals was drafted by the OPCW Secretariat for the almost exclusive purpose of assisting our Member States in identifying activities that are subject to declaration. From this point of view, the inclusion of these salts in the Handbook are intended to draw the attention of Member States to the possibility that, where they identify transfers of such compounds, this could possibly point to the existence of declarable activities. This is also made clear in the Introduction of the Handbook. The Handbook has no legal status and the inclusion or omission of a given chemical does not place any compliance obligation on any Member State under the CWC. We contend, therefore, that it would serve a useful purpose to retain these compounds in the list for the time being, at least until such time as clearer consensus on their status has been reached. There is certainly no intention that the organs of the WCO should become embroiled in the legal or political debate surrounding the content of the CWC schedules of chemicals, but the

request is simply that an opinion on classification of the chemicals currently in the Handbook be expressed.”

III. COMMENTS FROM ADMINISTRATIONS

11. On 12 July 2001, the Secretariat received a letter from the Japanese Customs Administration, indicating that “11 of the chemical products in Annex Q/3 to Doc. NC0430B2 identified by the page numbers and line numbers of that Annex and CAS registration numbers, as set out in the table of Annex I to this document, should be deleted in view of the fact that these products are not covered by the Chemical Weapons Convention.”
12. On 18 July 2001, the Secretariat received the following comments from the EC. “The States’ Parties of the OPCW, represented in the Executive Council of the OPCW, and the Technical Secretariat of the OPCW disagree on the scope of CWC schedules. While the Executive Council in paragraph No. 13.1 of its 19th Report EC-XIX/6, dated 3 May 2000, expressed its opinion that certain salts of scheduled chemicals such as those marked with an “*” in Annex Q/3 to the report of the HS Committee are not covered by the CWC schedules, the Technical Secretariat continues to hold the opposite view which is reflected in the Handbook on Chemicals edited by the Technical Secretariat in its own responsibility and not adopted by the Executive Council and the Conference of the State Parties of the OPCW.
13. Since the Handbook on Chemicals was not adopted by the competent bodies of the OPCW, the chemicals contained therein cannot serve as a legal basis for the determination of the scope of the CWC schedules and for reference by the WCO.
14. In our view, the WCO should therefore list in Annex Q/3 only those chemicals which are commonly agreed to be covered by the CWC schedules.”
15. On 17 July 2001, the Secretariat received a letter from Mexico indicating that Annex Q/3 to Doc. NC0430E2 reflected 932 chemicals as appeared in the OPCW handbook on Chemicals. It appears that Mexico is of the view that these chemicals are covered under the CWC schedules of chemicals.
16. The Secretariat also received letters from Cuba, Azerbaijan and Morocco indicating that they would contribute on this question at the HSC meeting.

IV. SECRETARIAT COMMENTS

17. The Secretariat first wishes to recall that at its 27th Session, the Committee discussed this issue under two different agenda items as reflected in Annexes E/1, E/3 and Q/3 to its Report (Doc. NC0430E2). The discussion reflected in Annex E/1 concerned the classification of chemicals, as they appeared in the OPCW Handbook, examined by the SSC at its 16th Session. Annex Q/3 reflected the classification of these chemicals under the HS 1996 version as examined and reflected in the Report of the 16th Session of the SSC. Annex E/3 concerned the classification of these chemicals under the 2002 version of the HS.
18. To facilitate the Committee's examination of the classification of these chemicals under the HS 2002 version, the Secretariat has modified Annex Q/3 to Doc. NC0430E2 by inserting the classifications suggested by the Secretariat in Annex V to its Doc. NC0367E1 and has reproduced this modified list in Annex II to this document (newly inserted subheadings have been underlined). In this connection, as mentioned in Annex E/3 to

Doc. NC0430E2, the Secretariat wishes to remind the Committee that the classifications suggested by the Secretariat involved a mechanical transposition from the 1996 version to the 2002 version and therefore would not conflict with the classifications suggested by the SSC at its 16th Session.

19. With regard to the question of whether certain chemical products appearing in the OPCW Handbook were covered in the schedules in the Annex on Chemicals of the CWC, the current situation is well explained by the OPCW (see paragraphs 7 to 10 above).
20. It appears that the question raised at the 27th Session concerned some amine-functional salts and adducts which have been marked with an "*" in Annex II to this document. The EC felt that these products were not covered under the CWC. The EC is of the view that the WCO should therefore list only those chemicals which are commonly agreed to be covered by the CWC schedules (see paragraphs 12 to 14 above).
21. The Japanese Administration has indicated 11 products which should be deleted for the reason that they are not covered by the CWC. Three of these products are new (see the first three items in Annex I to this document) and eight others were already marked with an "*" in Annex II to this document. These three new products were also marked with an "*" in Annex II to this document.
22. According to the OPCW Secretariat, no firm decision has been taken to date on this issue. However, the OPCW Secretariat is of the view that it would serve a useful purpose to retain these compounds in the list, for the time being, at least until such time as a clearer consensus on their status is reached. Their request to the WCO is simply to express an opinion on the classification of the chemicals currently in the OPCW Handbook.
23. The Secretariat is, therefore, of the view that the Committee should respond to this request by examining the classification of all chemicals currently listed in the OPCW Handbook. In doing so, the Committee would not be casting its judgement on the appropriateness of (nor endorsing) the inclusion of specific products in the Handbook, but merely providing technical advice on the HS classification of those products.
24. However, based on the OPCW Secretariat letter, it appears that some of the chemicals in question are adducts. An adduct is "a product of a process of chemical addition; a compound produced by the combination of two or more substances" (Dictionary of Science and Technology, Academic Press Inc., 1992).
25. With regard to these adducts, the Secretariat feels that this information was not clearly available to the SSC when it examined the classification of these chemicals at its 16th Session. In view of the possible classification of these adducts outside of Chapter 29, the Secretariat feels that it would be appropriate to refer the classification of these adducts to the SSC for further examination. The Secretariat has identified the two possible adducts and indicated them by underlining (see Annex II, page III/8). However, the OPCW should provide more detailed information on these adducts to facilitate the SSC' examination of their possible classification.
26. The Committee is also reminded that the SSC at its 16th Session postponed the examination of certain products due to the need for further information. These products are set out in square brackets in Annex II to this document.

V. CONCLUSION

27. Taking note of the above comments of the OPCW Secretariat, certain administrations and the Secretariat, the Committee is invited to :

- decide whether to provide advice on the classification of the items on the list marked with an asterisk;
- to refer the classification of the items within square brackets back to the Scientific Sub-Committee for further consideration, and
- to examine the classification of the remaining items listed in Annex II to this document.

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