



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
COMMITTEE

-
28th Session

NC0510E2

(HSC/28/Nov. 2001)

O. Eng./Fr.

Brussels, 23 November 2001.

REPORT TO THE CUSTOMS CO-OPERATION COUNCIL ON THE
TWENTY-EIGHTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE

Note : This Report is divided in four parts :
PART I - Body of the Report, Annexes A and B
PART II - Annexes C to J
PART III - Annexes K to M
PART IV - Annexes N to Q

1. The Harmonized System Committee (HSC) held its 28th Session from 13 to 23 November 2001 at the Headquarters of the World Customs Organization in Brussels under the chairmanship of Mr. J. HINDSDAL (Denmark).

2. The following 55 Members (54 Countries and one Customs or Economic Union) were represented :

Countries :

AUSTRALIA	HUNGARY	NORWAY
BANGLADESH	INDIA	PAKISTAN
BELARUS	INDONESIA	PANAMA
BELGIUM	IRAN	PHILIPPINES
BRAZIL	IRELAND	POLAND
BURKINA FASO	JAPAN	ROMANIA
CAMEROON	JORDAN	RUSSIA (Fed. of)
CANADA	KENYA	SAUDI ARABIA
CHINA	KOREA (Rep. of)	SENEGAL
CONGO (Dem. Rep. of)	LATVIA	SLOVAKIA
CÔTE D'IVOIRE	MACEDONIA (The Former Yugoslav Rep.of)	SLOVENIA
CYPRUS	MADAGASCAR	SOUTH AFRICA
CZECH REPUBLIC	MALAYSIA	SPAIN
DENMARK	MEXICO	SWEDEN
EGYPT	MOROCCO	SWITZERLAND
FINLAND	NETHERLANDS	THAILAND
FRANCE	NEW ZEALAND	TURKEY
GERMANY	NIGERIA	UNITED KINGDOM

Customs or Economic Union

EUROPEAN COMMUNITY (EC).

3. The following 4 Members of the Council and 5 international organizations were represented by observers :

COLOMBIA
LIBERIA
MOZAMBIQUE
YUGOSLAVIA

GULF CO-OPERATION COUNCIL (GCC)
INTERNATIONAL CHAMBER OF COMMERCE (ICC)
INTERNATIONAL CONTAINER BUREAU (ICB)
ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW)
WORLD TRADE ORGANIZATION (WTO).

4. A list of delegates and observers who attended the meeting is reproduced in Annex Q to this Report.

I. ADOPTION OF THE AGENDA
(Doc. NC0437E2)

5. The Committee decided to postpone the examination of Item VII.7 to its 30th Session and Item VII.11 to its next session (see Annexes G/7 and G/10, respectively).
6. In this context, a question was raised as to whether the classification of products which had no longer been manufactured should be examined by the Committee. Certain delegates pointed out that some of these products were still being traded internationally, e.g., products relating to Item VII.7, and the Committee should therefore continue to examine the classification of such products. The Committee instructed the Secretariat to prepare a document which would provide guidelines on how to deal with the classification of the above-mentioned types of products for the next session.
7. The EC Delegate questioned why the issue with regard to the "classification of concentrated milk with added sugar" had not been placed on the Agenda for the 28th Session. Referring to the Report of the Committee's 27th Session, Mr. H. KAPPLER, the Director of Tariff and Trade Affairs, explained that the Committee had agreed that this dispute between the Contracting Parties could be settled in accordance with Article 10 of the HS Convention on the basis of the results of analyses of the product involved. He pointed out that the Secretariat had so far received analytical results from two Customs laboratories only and was still awaiting results from the other two laboratories that had volunteered to provide analyses. (A third analysis was received by the Secretariat during the meeting). The Chairman noted that, if the dispute could not be settled between the two Contracting Parties, it should be placed on the Agenda for the Committee's next session. The Committee agreed.

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8. Subject to the foregoing, the Committee adopted the Agenda reproduced in Annex A to this Report. This Annex also serves as the Table of Contents.

II.1. POSITION REGARDING CONTRACTING PARTIES TO
THE HS CONVENTION AND RELATED MATTERS
(Doc. NC0439E1)

9. The Director informed the Committee that the Philippines had become the 104th Contracting Party to the HS Convention. He took this opportunity to congratulate the Philippines Administration and welcomed it to the Committee. He then urged Council Members not yet having acceded to the HS Convention to do so as soon as possible.
10. With regard to the Council's HS-related Recommendations, at its last sessions the Council had revoked the Recommendation on Narcotic Drugs and Psychotropic Substances and had replaced the existing Recommendation on the Use of Standard Units of Quantity with a new one. The Director hoped that the 22 administrations that had accepted the former Recommendation on the Use of Standard Units of Quantity would notify the Secretariat as soon as possible of their acceptance of the revised Recommendation.
11. Finally, the Director informed the Committee that at its June Sessions the Council had adopted the Recommendation on the Application of Harmonized System Committee Decisions. He hoped that the Contracting Parties to the HS Convention would inform the Secretariat of their acceptance of this Recommendation as soon as possible.
12. The Committee took note of this information, urged administrations to notify the Secretariat of the acceptance of Council Recommendations as soon as possible and also urged administrations that were not yet Contracting Parties to the HS Convention to accede thereto as soon as possible.
13. The list of Contracting Parties to the HS Convention and the list of administrations applying a tariff or statistical nomenclature based on the Harmonized System, as of 23 November 2001, are reproduced in Annexes B/1 and B/2 to this Report, respectively.

II.2. REPORT ON THE MEETINGS OF THE POLICY COMMISSION (45th SESSION)
AND THE COUNCIL (97th AND 98th SESSIONS)
(Doc. NR0190E1)

14. The Director gave a summary of the discussions held at the latest sessions of the Policy Commission and the Council, which were intriguing ones from the standpoint of the Harmonized System.
15. The Director informed the Committee that the Council had approved the establishment of a WCO documentation database which would be accessible to the public. The database would cover the historical working documents and reports of the Harmonized System Committee. The database, the Director emphasised, would not include business confidential information or current working documents.

16. The Director outlined a simplified set of procedures to be followed in making HS documentation from the database available to the public. In principle, after having deleted any business confidential information and references to specific administrations, the Secretariat would periodically (for example, every six months) circulate a notification for consideration for derestriction of all documents relating to questions which had been (or were deemed to have been) closed by the Council during the past six months. Unless a Member objected to the derestriction of any document in whole or in part within a specified period, all the documents listed would be derestricted after the end of that period and could then be made available to the public.
17. The Director further informed the Committee that the Finance Committee had been asked by the Council to examine the question of whether to charge a nominal fee to the public for the use of the database on a cost recovery basis, taking into account the interest of transparency and the fact that there would be no significant costs involved in making the WCO Members' documentation database partially available to the public.
18. With regard to the issue of the frequency of amendments to the Harmonized System, the Director reported that the Council had agreed with the Harmonized System Committee that : (i) the length of the current HS review cycle should not be changed; (ii) the length of future review cycles should be determined flexibly before each review cycle began, based on an assessment of the scope of the review; (iii) there was no need to amend the HS Convention in order to shorten the implementation period for Contracting Parties; and (iv) the Secretariat should explain the complexities of the HS review process to the trade at the next WCO Open Day for Trade in November 2001.
19. With regard to the reports of the Harmonized System Committee, the Council : (i) adopted the proposed corrigendum amendments to the Article 16 Recommendation; (ii) adopted the proposed Recommendation on the Application of HSC Decisions; revoked the existing Recommendation on Standard Units of Quantity and adopted the proposed replacement Recommendation; (iii) revoked the Recommendation on Narcotics Drugs and Psychotropic substances; and (iv) referred the US reservation on the classification of certain LAN repeaters back to the HS Committee for reconsideration at this Session.
20. Referring to the Council's approval of the revised WCO Strategic Plan with regard to the Harmonized System, which was set out in the Annex to the working document, the Director strongly recommended that delegates should study the plan closely as an indication of what their Directors General expected from them, the Committee and the Secretariat over the coming year.
21. Referring to the suggestion made at the Council meeting that there should be a fundamental review of the Harmonized System aimed at designing a revised and simplified system, the Director mentioned that the drafters of the Harmonized System had hoped to avoid the need for a fundamental review of the Harmonized System through the establishment of the review process. He recalled that even the drafting of the Harmonized System did not really involve the need of a fundamental review for Customs tariffs and trade statistical nomenclatures, but involved an elaboration of the existing CCCN or Brussels Tariff Nomenclature which had itself evolved out of the Geneva Nomenclature of the League of Nations.

22. The Director advised that, while the Secretariat had intended to have an initial discussion on this issue in the Committee, a request had been received from the delegation concerned to delay any such discussion until the Policy Commission had examined its proposals in December. The Director suggested that the Committee should await further developments in the Policy Commission before taking up this issue.
23. The Chairman suggested that all delegates should draw the attention of their administrations to the importance of the HS work outlined in the WCO Strategic Plan. Regarding the issue of a fundamental review of the Harmonized System, he emphasised the need for trade facilitation as the importance of Customs duties had been decreasing. Stating that all administrations could submit proposals for the simplification of the Harmonized System during the RSC review process, he pointed out that a proposal submitted to the Review Sub-Committee to group together all toys was a proposal for the simplification of the Harmonized System.
24. Referring to his statement made at the last session of the Review Sub-Committee, the EC Delegate welcomed the fact that the Harmonized System was regarded as one of the priorities of the WCO and stressed that appropriate resources should therefore be allocated to the HS work. Concerning the issue of a fundamental review of the Harmonized System, he suggested that, since certain economic operators had expressed their support for the simplification of the Harmonized System, the Secretariat should report those wishes to the Policy Commission and the proposal for a fundamental review of the HS should be discussed with the trade at the upcoming WCO Open Day for Trade.
25. In response to the last point, the Director indicated that the Policy Commission had already been made aware of the interests of the trade and that the issue of a fundamental review of the Harmonized System would likely be discussed in general terms at the next Open Day for Trade. He explained, however, that the major concern of the trade expressed so far was to speed up changes to the Harmonized System in response to changes in patterns of international trade, while the proposal for a fundamental review was aimed at an overall review of the Harmonized System for the benefit of Customs as well as trade.
26. The Committee took note of the report on the meetings of the Policy Commission and the Council in the working document and the Director's oral report.

II.3. APPROVAL OF DECISIONS TAKEN BY THE
HARMONIZED SYSTEM COMMITTEE AT ITS 27th SESSION
(Docs. NG0027E1 and NC0441E1)

27. The Chairman opened the discussion by indicating that as a result of the procedure chosen by the Contracting Parties that had entered reservations against the decisions taken by the Harmonized System Committee at its 27th Session, it would not be possible to examine those reservations before the 30th Session.
28. Following that clarification, the Committee took note of the Secretariat's report that the decisions taken by the Committee at its 27th Session had been deemed approved by the Council, in accordance with Article 8.2 of the Harmonized System Convention, except for the decisions against which reservations had been entered by HS Contracting Parties as

follows :

- One by the European Community and the Administration of the Czech Republic concerning the "classification of the "Media Composer 1000" and the deletion of Classification Opinion 8543.89/4" (Annex H/2 to Doc. NC0430E2).
- One by the European Community and the Brazilian Administration concerning the "decision that "photocopying" is limited to the projection of an image onto a photosensitive surface and that present heading 90.09 does not cover digital copying", and the "decision to amend the Explanatory Notes accordingly (*)" (Annex H/4 to Doc. NC0430E2).

(*) The request in respect of this latter part has been lodged by the EC only.

- One by the European Community and the Brazilian Administration concerning the "classification of the "HP Mopier 320" digital copier" (Annex H/4 to Doc. NC0430E2).
- One by the European Community and the Brazilian Administration concerning the "classification of the "Xerox Document Centre 340 ST" digital copier without fax function" (Annex H/4 to Doc. NC0430E2).
- One by the European Community and the Brazilian Administration concerning the "classification of the "Xerox Document Centre 340 ST" digital copier with fax function" (Annex H/4 to Doc. NC0430E2).
- One by the United States Administration concerning the "classification of the "Brother MFC-8600" digital copier" (Annex H/4 to Doc. NC0430E2).
- One by the United States Administration concerning the "classification of the "Brother 1970mc" digital copier" (Annex H/4 to Doc. NC0430E2).

29. The European Community and the Administrations of the Czech Republic, Brazil and the United States have requested that their questions be referred to the Council. These questions will therefore be placed before the Council at its 99th/100th Sessions in June 2002.

II.4. TECHNICAL ASSISTANCE ACTIVITIES OF THE NOMENCLATURE AND CLASSIFICATION SUB-DIRECTORATE (Doc. NC0442E1)

30. The Director explained that since the last session of the Committee in May, the Secretariat had organised a number of training programmes all over the world. These included national seminars in Albania, Benin, China, Ghana, Kazakhstan and Mongolia, and regional seminars in Singapore (for the Asia/Pacific region) and Kenya (for the East and Southern Africa region). The latter seminar concentrated on Customs laboratory matters and was highly appreciated.

31. He thanked the Japanese Administration for supporting many of the programmes (especially the regional ones) and the UNDP for its sponsorship of the HS seminar in China. He also asked administrations to share with the Committee information on technical

assistance activities they had recently completed and, if possible, were planning for the next year.

32. The Director pointed out that the Secretariat's planned technical assistance activities for this Council year had been published on the WCO Members Web site. With regard to these activities he informed the Committee that the WCO had decided to suspend delivery of technical assistance during the remainder of this calendar year due to the security situation in the world after 11 September. The Secretariat was planning to restart its technical assistance programmes early next year and individual administrations would be informed of the arrangements as soon as the Secretariat's training calendar was reconfigured.
33. The Delegate of China expressed the gratitude of his administration to the Secretariat for organising an HS Seminar in his country and to UNDP for its sponsorship of this seminar.

II.5. CO-OPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS (Doc. NC0443E1)

34. The Director informed the Committee about the co-operation with the ICC, WTO, UNEP and OPCW that was reported in the working document and highlighted the contributions made by those organizations to many of the documents on the agenda for this meeting of the Committee.
35. In addition, he informed the Committee that, at the invitation of the EC, a Secretariat official had participated in a workshop on information technology products held in Poitiers, France and indicated that the WCO presentation at that workshop had concentrated on issues related to the 3rd HS Review Cycle, such as timing and procedures.
36. The representative of the WTO explained the status of the implementation of the HS 1996 amendments with regard to the WTO schedules of tariff concessions. She noted that 21 WTO Members were still in the process of incorporating the amendments into their WTO schedules and that 19 Members were operating under a WTO waiver. She noted that these waivers would expire at the end of April 2002.
37. With respect to the HS 2002 amendments, she explained that on 18 July 2001, the General Council of the WTO had approved a new procedure for the introduction of the HS 2002 amendments to the WTO schedules of concessions as reflected in WTO document WT/L/407. She explained that the new procedure was intended to overcome the problems and delays experienced in the past.
38. In respect of the classification of certain information technology products, the representative of the WTO noted that this issue had been included in the agenda of this meeting of the Committee and the WTO would extend its co-operation to the Committee in this regard.
39. Drawing the attention of the Committee to paragraph 12 of the working document concerning the Rotterdam Convention, the EC Delegate suggested that the classification of relevant chemicals should first be dealt with by the Secretariat. The Director responded that on receipt of a precise request from the Executive Secretariat of the Rotterdam Convention, the Secretariat would take the necessary action and the Committee would be kept informed.

40. In response to a question as to the status of the meetings between the Secretariat and the ICC, the Director and the Observer for the ICC stressed that the ICC/WCO Secretariat meetings were informal meetings which had been found extremely useful and they looked forward to continuing this excellent working relationship.

II.6. NEW INFORMATION PROVIDED ON THE WCO WEB SITE (Doc. NC0444E1)

41. The Director, while explaining the various issues listed in the document, invited Members to make full use of the WCO Web site. He regretted that, due to technical problems, it had not yet been possible to launch the Harmonized System Explanatory Notes on the Internet, but hoped that these problems would be solved soon.
42. The Committee took note of the other information referred to in the working document.

II.7. SURVEY ON FREE TRADE AGREEMENTS (Doc. NC0445E1)

43. The Director informed the Committee that this survey had been updated based on the instructions of the Committee at its 27th Session. He explained that 145 countries were involved in one or more free trade agreements and almost one-half of world trade took place between member countries of free trade agreements. He also noted that the Harmonized System played an important role in the development and implementation of free trade agreements.
44. The EC Delegate congratulated the Secretariat on providing very useful information to the Committee by means of the survey and stated that he had not had sufficient time to verify the data related to the trade of the EC and its member states. He said that, if necessary, he would submit the correct figures to the Secretariat in writing. Drawing the attention of the Committee to item numbers 113, 115, 116, 125, 126, 127 and 130 in Annex I to the working document, he wondered whether the organizations referred to therein were "Customs or Economic Unions" within the meaning of the provisions of the WTO or of the HS Convention. If so, these organizations and their members should exercise only one vote in the HS Committee. He added that the agreement between the EC and Turkey, for instance, was a Customs Union, except in respect of certain products, in particular those falling within Chapters 1 to 24 of the HS, and therefore Turkey kept its separate voting right in the Committee.
45. In this connection, the Director explained that much of the information included in the working document had been taken from WTO documents and the concepts of "Customs Union" and "Free Trade Area", as defined on page 10 of Annex I to the working document, were not intended to be used in the same sense as in the HS Convention. The Observer for the WTO clarified that, under the WTO provisions, there were only two Customs Unions : amongst the Member States of the EU and between Switzerland and Liechtenstein. She believed that the organizations referred to by the EC Delegate could not meet the WTO definition of "Customs Union".

46. Thanking the EC Delegate for raising this issue, the Director also pointed out that, according to Article 11 of the HS Convention, "Customs or Economic Unions" could become a Contracting Party to that Convention if they had been given competence to enter into treaties in respect of some or all of the matters governed by the Convention. He concluded that the Secretariat would look into the characterization "Customs union" and "Free trade area" in Annex I to Doc. NC0445E1 for the next session of the Committee and would correct any mis-characterizations. The Committee agreed.

II.8. SURVEY ON THE CAPACITY OF HS CONTRACTING PARTIES
TO USE THE HS DISCUSSION FORUM
(Doc. NC0446E1)

47. The Director, while introducing the document, expressed his disappointment with regard to the very limited use of the Harmonized System Discussion Forums so far. Based on the results of the survey, one of the main reasons might be the low number of classification centres having access to the WCO Members Web site. He suggested that administrations could use the forums, for example, to inform other administrations about their HS proposals at an early stage. However, with respect to the suggestion to have all submissions translated into the other WCO language, he explained that the Secretariat did not have the resources to do so. Finally, he informed the Committee that separate information was already available on the Members Website with respect to classification advice provided by the Secretariat.
48. A number of administrations stressed the informal character of the forums and indicated that, therefore, no issues which needed formal approval of the Committee or which involved a dispute between two Contracting Parties to the HS Convention, should be submitted to the forums.
49. The Chairman, while inviting delegations to use the forums more frequently, concluded that the results of the survey had given sufficient ideas to the Secretariat and the administrations as to what kinds of issues could and should be raised in the discussion forums.

II.9. WCO POLICY WITH REGARD TO THE PUBLICATION OF LATE DOCUMENTS
(Doc. NC0456E1)

50. The Director introduced the new WCO policy with regard to the publication of late documents, which, starting from this session, would only be reproduced as "non-papers" in the language(s) received and would not be published as official WCO documents in the two official languages. He explained that the Secretariat had had to take a critical look at the way in which it approached its work, in response to the re-organization of its internal mechanisms, including a move to "out-source" various services that had traditionally been handled in-house.
51. Although the difficulties of the Secretariat were appreciated, several delegates expressed their concerns over strict compliance with the timeframes for submissions.

52. It was felt that, while best efforts would be made by Members to submit papers in a timely manner, a certain flexibility would be required with regard to late submissions, as Members needed time for co-ordination with other agencies and industries. It was remarked that "non-papers" were not official documents and would create difficulties with regard to their presentation and reference. One delegate requested that a distinction be made between the late submission of new questions and comments on basic working documents. It was indicated that best efforts should be made to publish late submissions of comments as official documents in both official languages, especially when they were not lengthy and contained useful technical information. Furthermore, it was stated that one consequence of publishing late submissions as "non-papers" only might be to delay the consideration of questions by the Committee and might thus affect the decision-making process of the Committee. It was also pointed out that, given that most of the "non-papers" for this session were in English only, a disadvantage to French-speaking delegates had resulted.
53. One delegate commented that, while flexibility would be required with regard to important new questions, strict deadlines might be desirable with regard to questions under the category of "further studies", which were usually adequately presented and for which Members should have had enough time to collect information and submit comments on a timely basis.
54. The Committee requested that these concerns be presented to the management of the WCO with a view to finding a better solution.
55. Furthermore, certain French speaking delegates pointed out that they had lately noticed a certain lack of alignment between the English and French texts of the Committee's working documents. They hoped that the Secretariat would be able to resolve this problem in the near future.
56. In response, the Director assured that the views of the Committee would be communicated to management. He explained, however, that it was necessary to impose a certain degree of discipline on both the Secretariat and Members. He noted that comments submitted later than eight weeks before the opening of the Committee session would be published as official documents as far as possible in cases where the Secretariat's documents were not published on a timely basis. He added that late submissions would also be reproduced in both WCO official languages if so provided by administrations. Finally, he pointed out that "non-papers" were not new to the Committee and should not result in greater delays in the consideration of questions by the Committee than the past practice of publishing late submissions as official documents in both WCO official languages.

II.10. APPROVAL OF REVIEW SUB-COMMITTEE REPORTS (Doc. NC0457E1)

57. The Director explained the reasons for the Secretariat's proposal to change the procedure regarding the approval of RSC reports and outlined the new approval procedure as set out in paragraph 4 of the working document. He indicated that the discontinuation of the WCO practice of reading of reports at the end of meetings applied not only to the RSC but also to other committees (except for the HSC) and their sub-groups. He believed that the new procedure would save time and money for both Members and the Secretariat.

58. Although not against changing the procedure regarding the approval of RSC reports, the Committee stated that the existing practice of reading the RSC reports at the end of each session should be followed, since the established procedure was more advantageous from a technical point of view.
59. One delegate raised the matter of methodology for amending the report approval procedure. Referring to Council Decision 249 of June 1986, which provided in pertinent part that, to the extent possible, committee reports shall be adopted at the end of each session, she stated that the proposed new procedure should have proper regard to that Council Decision and argued that only the Council could change that provision through the legal procedures established under the Council Convention and its Rules of Procedures.
60. The Director suggested that while he believed that, based on past and scheduled discussions of this matter in the Policy Commission, there would be a decision to ask the Council to change its position with regard to the approval of committee reports, the Committee should leave that issue to the policy making bodies of the WCO and focus on the proposed procedure.
61. With regard to the proposed procedure, a number of specific suggestions were made and accepted as detailed below. A concern was expressed about the fact that the proposed procedure provided that "only written comments will be accepted on the draft report". In this connection, the Chairman clarified that in cases where certain delegations were unable to submit written comments on the draft report within the specified time limit, they would still have a chance to propose amendments during the Committee's examination of the RSC report. The Director also preferred to limit the amendments to the draft report to written comments only, so that the time gained at the RSC would not be lost in the HSC. The Committee agreed to restrict comments on the draft RSC report to written comments.
62. The Committee finally accepted the proposed procedure with the following modifications to paragraph 4 of the working document :
- Bullet point 4 : "delegates" was changed to "delegations represented at the RSC meeting";
 - Bullet point 5 : "one week" was changed to "two weeks after transmission of the draft report", so that delegations would have more time to submit written comments;
 - Bullet point 7 : "finalised" was changed to "adopted"; "first week" was changed to "first day", so as to give delegates more time to consider the issues involved; and "delegates" was changed to "delegations represented at the RSC meeting".
63. One delegate also expressed his concern about the timeliness of the publication of the usual decision document for the HSC, which was based on the report of the RSC, if the approval of the RSC report were delayed. In response, the Chairman commented that best efforts would be made by the Secretariat in preparing the decision document taking into account the draft RSC report and any written comments thereon.

64. Another delegate questioned whether some flexibility should be extended to allow for the reading of the RSC report of its Spring 2004 Session at that RSC session, given that the Committee would not have much time to read the RSC report at its immediately following session in view of the large number of expected amendments. The Director responded that, while he thought that the fact that the texts of amendments would be given to Members of the RSC at the end of sessions would help, this question should be revisited closer to the Spring 2004 Session when the situation would be clearer.

II.11. CORRIGENDUM TO DOC. NG0023B1 (CORRELATION TABLES)
(Doc. NG0032B1)

65. The Chairman pointed out that the correlations set out in Doc. NG0032B1 were correct since the content of present subheading 6812.90 had been transferred to subheading 6812.90 under HS 2002. He also noted that the Correlation Tables constituted a guide published by the Secretariat and did not have legal status.
66. The Committee agreed with the Corrigendum to Doc. NG0032B1 as proposed.

III. GENERAL QUESTIONS

67. The Committee's conclusions concerning Agenda Item III are reproduced in Annexes C, M/6 and N to this Report.

IV. RECOMMENDATIONS

68. The Committee's conclusions concerning Agenda Item IV are reproduced in Annexes D and K to this Report.

V. REPORT OF THE HS REVIEW SUB-COMMITTEE
(24th Session)

69. The Harmonized System Committee examined the conclusions reached by the Review Sub-Committee at its 24th Session.
70. The results of this examination are reproduced in Annexes E, L/1 to L/6 and M/10 to this Report.
71. On behalf of the Committee, the Chairman thanked the HS Review Sub-Committee and its Chairman for the excellent work accomplished at the 24th Session of the Sub-Committee.

VI. REPORT OF THE WORKING PARTY

72. The Harmonized System Committee examined the conclusions reached at the Working Party's preessional meeting. The conclusions of the Committee are reproduced in Annex F to this Report.

73. The texts finalized by the Working Party and adopted by the Committee are set out in Annexes M/7 to M/9 to this Report.
74. On behalf of the Committee, the Chairman congratulated the Chairman of the Working Party and its Members on their excellent work.

VII and VIII. FURTHER STUDIES, NEW QUESTIONS
AND ADDITIONAL LIST

75. The Committee's conclusions concerning Agenda Items VII and VIII are reproduced in Annexes G, H, M/1 to M/5, M/10 to M/12 and O to this Report. Unless otherwise noted the classification decisions taken by the Committee at this session are applicable to both the 1996 and 2002 versions of the Harmonized System.

IX. OTHER BUSINESS

LIST OF QUESTIONS WHICH MIGHT BE EXAMINED AT A FUTURE SESSION

76. The Committee's conclusion concerning Agenda Item IX.1 (List of questions which might be examined at a future session) is reproduced in Annexes IJ and P to this Report.

STAFF CHANGES

77. The Director informed the Committee that Mr. Jae-Ho KIM, Technical Attaché (Rep. of Korea), had recently left the Secretariat to return to his administration. Mr. Bang-Hyun NAM (Rep. of KOREA) has joined the Secretariat as a new Technical Attaché and Mr. Alexey SHCHEGLOV (Fed. of RUSSIA) as a Clerk Co-ordinator. The Director thanked Mr. KIM for his past contributions to the work of the Secretariat and the Committee. He also expressed his appreciation to the Korean and Russian Administrations for their secondment of officers to the Secretariat.

PRESENTATION BY THE EC ON THE INTRODUCTION OF THE EURO

78. Mr. M. VANDEN ABEELE, the Director General of TAXUD-EC, made a presentation on the introduction of the Euro, which replaces national currencies in the European Union (except for Denmark, Sweden and the United Kingdom) on 1 January 2002. He made reference to its expected impact on the work of Customs in general and on the Combined Nomenclature of the EC in particular.
79. The presentation was followed by a useful question/answer session. Mr. Vanden Abeele indicated that the EC was ready to answer any questions encountered by the other Customs administrations in relation to the Euro.
80. The Committee took note of Mr. Vanden Abeele's presentation and expressed its appreciation and thanks.

X. DATES OF NEXT SESSIONS

81. The provisional dates of the next meetings of the Scientific Sub-Committee, the Harmonized System Working Group, the Review Sub-Committee, the Working Party and the Harmonized System Committee are as follows :

(a) Scientific Sub-Committee (17th Session)

Monday, 14 January 2002 (10 a.m.) to
Friday, 18 January 2002

(b) HS Working Group

Wednesday, 13 March 2002 (10 a.m.) to
Friday, 15 March 2002

(c) Review Sub-Committee (25th Session)

Monday, 18 March 2002 (10 a.m.) to
Thursday, 28 March 2002

(d) Working Party

Wednesday, 15 May 2002 (10 a.m.) to
Friday, 17 May 2002

(e) Harmonized System Committee (29th Session)

Tuesday, 21 May 2002 (10 a.m.) to
Friday, 31 May 2002.

J. HINDSDAL,
Chairman.

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ANNEX A

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- | | |
|--|------------|
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|
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16. Classification of parts of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays (Request from the WTO) H/15
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* * *

ANNEX B/1

LIST OF CONTRACTING PARTIES
TO THE HARMONIZED SYSTEM CONVENTION

Situation as of 23 November 2001

(103 countries and 1 Customs or Economic Union)

Algeria	Hungary	Nigeria
Argentina	Iceland	Norway
Australia	India	Pakistan
Austria	Indonesia	Panama
Azerbaijan	Iran	Peru
Bangladesh	Ireland	Philippines
Belarus	Israel	Poland
Belgium	Italy	Portugal
Botswana	Japan	Romania
Brazil	Jordan	Russia (Federation of)
Bulgaria	Kenya	Rwanda
Burkina Faso	Korea (Republic of)	Saudi Arabia
Cameroon	Latvia	Senegal
Canada	Lebanon	Slovakia
Central African Republic	Lesotho	Slovenia
Chad	Libyan Arab Jamahiriya	South Africa
China	Lithuania	Spain
Congo (Democratic Republic of)	Luxembourg	Sri Lanka
Côte d'Ivoire	Macedonia (The Former Yugoslav Republic of)	Sudan
Croatia	Madagascar	Swaziland
Cuba	Malawi	Sweden
Cyprus	Malaysia	Switzerland
Czech Republic	Maldives	Thailand
Denmark	Mali	Togo
Egypt	Malta	Tunisia
Estonia	Mauritius	Turkey
Ethiopia	Mauritania	Uganda
Fiji	Mexico	United Kingdom
Finland	Mongolia	United States
France	Morocco	Uzbekistan
Gabon	Myanmar	Venezuela
Germany	Netherlands	Vietnam
Greece	New Zealand	Zambia
Guinea	Niger	Zimbabwe
Haiti		EC

* * *

ANNEX B/2
LIST OF COUNTRIES, TERRITORIES AND CUSTOMS OR ECONOMIC
UNIONS USING THE HARMONIZED SYSTEM
Situation as of 23 November 2001
(Total 179)

Albania	x	Honduras	x	Rwanda	+
Algeria	+	Hong Kong, China	x	Saint Kitts and Nevis	x
Antigua and Barbuda	x	Hungary	+	Saint Lucia	x
Argentina	+	Iceland	+	Saint Pierre and Miquelon	
Australia	+	India	+	(French Terr.)	x
Austria	+	Indonesia	+	Saint Vincent and	
Azerbaijan.....	+	Iran	+	the Grenadines	x
Bahamas	x	Ireland	+	Saudi Arabia	+
Bahrain	x	Israel	+	Senegal	+
Bangladesh	+	Italy	+	Sierra Leone	x
Barbados	x	Jamaica	x	Singapore	x
Belarus	+	Japan	+	Slovakia	+
Belgium.....	+	Jordan.....	+	Slovenia	+
Belize.....	x	Kazakhstan	x	Solomon Islands	x
Benin	x	Kenya	+	South Africa	+
Bermuda	x	Kiribati.....	x	Spain	+
Bolivia	x	Korea (Republic of)	+	Sri Lanka	+
Botswana.....	+	Kuwait	x	Sudan	+
Brazil.....	+	Latvia	+	Suriname	x
Brunei Darussalam	x	Lebanon	+	Swaziland	+
Bulgaria	+	Lesotho	+	Sweden	+
Burkina Faso	+	Libyan Arab Jamahiriya	+	Switzerland	+
Cameroon.....	+	Liberia	x	Syrian Arab Republic	x
Canada	+	Liechtenstein	x	Tanzania	x
Cape Verde	x	Lithuania	+	Thailand	+
Central African Republic	+	Luxembourg	+	Togo	+
Chad	+	Macedonia (The Former		Tonga	x
Chile	x	Yugoslav Republic of)	+	Trinidad and Tobago	x
China	+	Macau, China.....	x	Tunisia	+
Colombia	x	Madagascar	+	Turkey	+
Comoros	x	Malawi	+	Tuvalu	x
Congo (Democratic Republic of)	+	Malaysia	+	Uganda	+
Congo (Republic of)	x	Maldives	+	Ukraine	x
Cook Islands	x	Mali	+	United Arab Emirates	x
Costa Rica	x	Malta	+	United Kingdom	+
Côte d'Ivoire	+	Mauritania	+	United States	+
Croatia	+	Mauritius	+	Uruguay	x
Cuba	+	Mexico	+	Uzbekistan.....	+
Cyprus	+	Mongolia	+	Vanuatu	x
Czech Republic	+	Morocco	+	Venezuela	+
Denmark	+	Mozambique	x	Viet Nam	+
Djibouti.....	x	Myanmar	+	Wallis and Futuna	
Dominica	x	Namibia	x	(French Terr.)	x
Dominican Republic	x	Netherlands	+	Yemen	x
Ecuador	x	Nepal	x	Zambia	+
Egypt	+	New Caledonia (French Terr.) ..	x	Zimbabwe	+
El Salvador	x	New Zealand	+	EC	+
Equatorial Guinea	x	Nicaragua	x	Andean Community (CAN)	+x
Estonia	+	Niger	+	Caribbean Community	
Ethiopia.....	+	Nigeria	+	(CARICOM)	+x
Fiji	+	Niue	x	Commonwealth of the	
Finland	+	Norway	+	Independent States (CIS).....	+x
France	+	Pakistan	+	Economic and Monetary	
Gabon	+	Panama	+	Community of Central Africa	
Gambia.....	x	Papua New Guinea	x	(CEMAC)	+x
Germany	+	Paraguay	x	Economic Community of	
Ghana	x	Peru	+	Western African States	
Greece.....	+	Philippines	+	(ECOWAS)	+x
Grenada	x	Poland	+	Gulf Co-operation Council	
Guatemala	x	Polynesia (French Terr.)	x	(GCC)	+x
Guinea	+	Portugal	+	Latin American Integration	
Guinea Bissau	x	Qatar	x	Association (ALADI)	+x
Guyana	x	Romania	+	Southern Cone Common	
Haiti	+	Russia (Federation of)	+	Market (MERCOSUR).....	+x

Notes :

- + Acceptance (i.e., Contracting Party to the Harmonized System Convention).
- x Indicates application only.
- +x Some Members are Contracting Parties to the Harmonized System Convention.

* * *

ANNEX C

GENERAL QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0448E1	UN/SPSC Commodity Classification System.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Director informed the Committee that no response had been received from the UNDP on the letter sent by the Secretariat on the use of the UN/SPSC. He also informed the Committee that it had become clear that there were in fact two SPSC systems now, one controlled by UNDP (i.e., the "UN/SPSC") and one controlled and maintained by a private association ECCMA (the "Universal SPSC"), which had responded to the Secretariat. As a result of this contact, two representatives of ECCMA had visited the Secretariat and clarified that their system was intended to provide information to the association's members with regard to expenditure analysis and the sourcing of products and services. The ECCMA representatives had suggested a disclaimer being placed on the ECCMA Website indicating that the Harmonized System should be used for purposes related to international trade, and had indicated that correlation tables between the two systems could be prepared by them.
2. Finally, the Director mentioned that he had arrived at the conclusion that there was no competition between the Harmonized System and the SPSC and said that the Committee would be informed if there were any significant developments with regard to this matter.
3. The Committee took note of the information provided by the Director.

* * *

1	2	
NC0449E1 NC0499E1	Establishment of a correlation between the Harmonized System and various international conventions.	<u>See Annex N.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. In opening discussion of this agenda item, the Director referred to paragraph 6 of Doc. NC0449E1 and noted that the Secretariat had contacted the UNEP and finalized the draft correlation based on new information provided by that organization. With respect to the WTO instruments, referring to paragraph 7 of the same document, he noted that the Rules of Origin were being developed on the basis of the Harmonized System, the GATT Schedules of Tariff Concessions were largely based on the HS, the Agreement on Pharmaceutical Products contained more than 7,000 items whose classification under the HS 2002 had not been reviewed, the Annex of the Agreement on Civil Aircraft had not been updated and the ITA negotiations were still ongoing. He therefore suggested that it was premature for the correlation to contain references to the WTO instruments. He also noted that adopting the draft correlation as proposed would be appropriate as a starting point, and emphasised that it would be possible to add references to other conventions and agreements, which were not listed at present, in the correlation at a future time.
2. With respect to the insertion of the term "informal" or "unofficial" in the title of the draft correlation, the Committee agreed to use neither since the introduction to the correlation stated clearly that the correlation had no legal or official status.
3. With regard to the publication of the correlation in hard copy, the Committee agreed to publish it as an Annex to the Classification Handbook rather than as an Annex to the Explanatory Notes.
4. Concerning the WTO instruments, one delegate suggested incorporating the WTO instruments on Pharmaceutical Products, Civil Aircraft and the ITA in the draft correlation, considering that certain tariff and statistical nomenclatures included references to these products. With respect to Civil Aircraft products, it was indicated that the WTO Committee on Trade in Civil Aircraft had already reviewed the Agreement based on HS 2002 and had adopted a revised Protocol amending the Annex to the Agreement, which was now open to Members for acceptance.
5. Another delegate took the view that the purpose of establishing the HS correlation at issue had to be considered and that a convention included in the correlation should be appropriate in this regard. For future reviews of the correlation, he also suggested that incorporating the ITA products would be appropriate. He noted that it might be difficult to incorporate the Civil Aircraft products in view of the fact that some of their classifications were based on the use of the products concerned.

6. The Committee finally agreed to publish the correlation as proposed by the Secretariat. The Secretariat was instructed to expand the correlation by incorporating other conventions and agreements in the future and to prepare a document in this connection for the next session of the Committee. The Secretariat was particularly directed to look into whether and to what extent the ITA, Civil Aircraft and Pharmaceutical Products agreements could be incorporated in the correlation.
7. The texts accepted are set out in Annex N to this Report.

* * *

1	2
NC0454E1	Proposed amendment of the Compendium of Classification Opinions.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Although the Committee generally appreciated the Secretariat's idea of examining the possibility of supplementing the existing Classification Opinions with pictures of the articles concerned, to the extent that such pictures were available from the Secretariat's files, the following concerns were expressed by some delegations from the legal and practical perspective :
 - (a) The existing Classification Opinions had already been adopted by the Committee and the Council by the Article 8 Procedure. Insertion of pictures of the articles concerned would require the adoption of such pictures through the same formal procedure, implying additional burdens on the Secretariat, on the one hand, and the Committee, on the other.
 - (b) For many administrations, the Compendium of Classification Opinions had a binding status at national level and, thus, these administrations had already issued binding tariff information on the basis of the Classification Opinions adopted by the WCO. Insertion of pictures in the existing Classification Opinions would make it necessary for such administrations to review the existing national binding tariff information.
 - (c) There were also certain risks inherent in inserting such pictures : The existing Opinions had been adopted by the Committee in the past on the basis of product descriptions and samples of the articles concerned. Administrations (and even perhaps private firms) confused by the newly inserted pictures, which were not taken into account in the past, could once again open up certain old classification decisions which had been taken after prolonged discussions by the Committee.
2. On the other hand, a number of delegations supported the Secretariat's proposal and saw no legal or practical difficulties with it.
3. The Committee unanimously confirmed that it would be beneficial to insert, to the extent possible and appropriate, a picture of the article concerned in the Compendium of Classification Opinions with regard to Opinions issued from the 27th Session onwards.
4. Since, the Committee was not able to come to agreement on the Secretariat's idea to supplement existing Classification Opinions with pictures of the articles concerned, the Secretariat was requested to prepare a new document for the next session of the Committee, setting out a possible procedure that would overcome the legal and practical concerns expressed by some delegations during the meeting. The draft procedure should be illustrated with appropriate examples from the Secretariat's files.

* * *

1	2	4
NC0506E1	Corrigendum to the Third Edition (2002) of the Explanatory Notes.	<u>See Annex M/6.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee thanked the Secretariat for bringing to its attention the typographical errors found in the Second Edition (1996) of the Explanatory Notes and the consequential corrections made in the Third Edition (2002), as presented in paragraphs 4 to 10 of the working document.
2. It was pointed out, however, that such corrections had to be made via the Article 8 Procedure. The Committee agreed to adopt the corrections involved by the Article 8 Procedure.
3. The texts adopted are set out in Annex M/6 to this Report.

* * *

1	2
NC0511E1	Russian working language version of the HS 2002 Explanatory Notes.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Presenting the working document, the Director informed the Committee that a Special Working Group had finalized the Russian working language version of the HS 2002 Explanatory Notes, which had been submitted to the Committee for acceptance.
2. The Chairman expressed his gratitude to the Russian-speaking Member administrations for their contribution in finalizing the Russian version of the HS 2002 Explanatory Notes and invited the Committee to accept it.
3. The EC Delegate congratulated Member administrations interested in the use of Russian as a working language for HS matters in supporting the acceptance of the Russian working language version of the HS 2002 Explanatory Notes by the Committee.
4. The Delegate of Russia thanked the participants in the Special Working Group and the WCO Secretariat for their support and co-operation in introducing Russian as a working language for the Harmonized System.
5. The Committee finally accepted the Russian version of the HS 2002 Explanatory Notes, the next step being to publish this version as a WCO publication.

* * *

ANNEX D

RECOMMENDATIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0450E1	Draft Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings to facilitate the monitoring and control of products specified in the draft Protocol concerning firearms covered by the UN Convention against transnational organized crime.			<u>See Annex K.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. With reference to the draft Recommendation as reproduced in Annex III to the working document, the Committee decided to delete the square brackets in the "Recommends" part of the Preamble and the "Requests" part at the end, thus giving administrations the possibility to group together two or more of the subdivisions referred to in the draft Recommendation.
2. Views were, however, divided with respect to the level of detail to be incorporated in the draft Recommendation. After some discussion the Committee concluded that, given the wording of the Preamble with respect to grouping together two or more of the subdivisions, the Canadian proposals could be taken as a basis for its review.
3. To accommodate the US concern with respect to magazines with a capacity of more than ten rounds, it was suggested to insert further subdivisions in the subheadings concerned (i.e., in subheadings 9305.10, 9305.29 and 9305.91). However, to give delegations the possibility to reflect on this proposal during the intersession, the subdivisions were placed in square brackets.
4. Some French speaking delegations questioned the appropriateness of some expressions in the French version, in particular whether the reference to "à coulisse" in the subdivisions of subheading 9303.20 was correct, or should be replaced by "à culasse" (in the English version referred to as "bolt action"). The Director reminded delegations that the Secretariat had suggested using the former French term as a translation of the English term "pump-action", which suggestions had been adopted by the Canadian Administration. Following this statement, the Chairman invited French speaking delegations to verify the

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

terminology which had been placed in square brackets and, where applicable, to come up with the appropriate wording.

5. The Committee also agreed to delete references to headings 97.05 and 97.06 in the draft Recommendation.
6. At the request of certain delegates, and in view of the relationship of this draft Recommendation to the Protocol concerning firearms covered by the UN Convention against transnational organized crime, the Secretariat was asked to contact the appropriate UN body during the intersession with a view to obtaining their comments and views on the draft Recommendation.
7. Pending further discussions and possible final adoption at its next session, the Committee decided to place the draft Recommendation as discussed in square brackets. The draft Recommendation is set out in Annex K to this Report.

* * *

ANNEX E

REPORT OF THE REVIEW SUB-COMMITTEE

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NR0205E2	Report of the 24 th Session of the HS Review Sub-Committee.		<u>See Annex M/10.</u>	<u>See Annexes L/1 to L/6.</u>
NC0452E1	Matters for decision by the Harmonized System Committee.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee examined the questions arising from the Report of the 24th Session of the HS Review Sub-Committee.

2. The decisions taken by the Committee are set out below with reference to the relevant Annexes of the Sub-Committee's Report (Doc. NR0205E2).

Annex B/1 – Report concerning the meetings of the Policy Commission (45th Session) and the Council (97th/98th Sessions)

3. The Committee took note of the fact that the Review Sub-Committee had been informed about the latest developments regarding the issues that were of particular interest to the Sub-Committee.

Annex B/2 – Decisions taken by the Harmonized System Committee at its 27th Session affecting the work of the Review Sub-Committee

4. The Committee took note of the fact that the Review Sub-Committee had been informed about the decisions taken by the Harmonized System Committee at its 27th Session and the pending questions affecting the work of the Sub-Committee.

Annex C/1 - Possible amendments to the Nomenclature regarding the classification of sauces

5. The Committee took note of the fact that this matter would be re-examined by the Sub-Committee at its next session on the basis of a new document to be prepared by the Secretariat containing two alternative proposals, (i) the Secretariat's proposal in Doc. NR0169E1 and (ii) a proposal which Canada was invited to submit on the basis of a Canadian International Trade Tribunal ruling.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annexes C/2 and F/1- Proposal by Canada to amend the Nomenclature to Chapter 54

6. The Committee provisionally adopted the texts approved by the Review Sub-Committee.
7. The texts provisionally adopted are set out in Annex L/1 to this Report.

Annexes C/3 and F/2 - Possible amendments to the Nomenclature and Explanatory Note to heading 84.42

8. The Committee took note of the developments in regard to this issue.

Annexes C/4 and F/3 - Possible amendments to the Explanatory Note to heading 84.71

9. The Committee examined the texts presented by the Sub-Committee aimed at amending the Explanatory Note to heading 84.71. After some discussion, by a vote of 15 to 13, the Committee decided not to use the references to “storage units” or “storage capacity”, as presented in square brackets on pages F/3/1 and F/3/2 in Annex F/3 to Doc. NR0205B2. However, at the suggestion of the Delegate of Cyprus, the Committee unanimously agreed to use the expression “storage capability”.
10. After an exchange of views, the Committee, by a vote of 18 to 11, decided not to include a reference to Note 5 (D) in sub-paragraph (ii) and in the following paragraph, as presented in square brackets on page F/3/4 in Annex F/3 to Doc. NR0205B2. The US Delegate argued for inclusion of the reference because it was not apparent that the new Explanatory Note was drafted to distinguish between units and accessories only. Also with reference to the fourth paragraph on page F/3/4, the Committee agreed, at the suggestion of the Director, to replace the word “it” with the term “an apparatus” in the first line in order to clarify the text and to move the beginning of the text to the left margin in order to make it clear that this text was part of the foregoing paragraph.
11. With regard to the second item (3), in Part (D) on page F/3/5 of Annex F/3, following the Committee’s discussion on Item VII.19 on its Agenda, the Committee decided to replace this item with Option 1 in the Annex to Doc. NC0480B1, having also agreed to delete the exclusion paragraph therein. For a discussion on this point, see Annex G/18 to this Report.
12. The Committee further agreed to delete the term “numérique” in the French text of the last paragraph of Part (D), Item (5).
13. Subject to the foregoing, the Committee adopted the texts as approved by the Review Sub-Committee.
14. The texts adopted are set out in Annex M/10 to this Report.

Annex C/5 - Possible amendments to the Nomenclature regarding the classification of cameras

15. The Committee took note of the developments in regard to this issue.

Annex C/6 - Possible amendments to the Nomenclature and Explanatory Notes to Chapter 24

16. The Committee took note of the fact that the Sub-Committee had held a preliminary discussion only on this matter so as to enable Contracting Parties to finish consulting with their industry and other experts. The Sub-Committee would be re-examining this issue at its next session.

Annex C/7 - Possible amendments to the Nomenclature in order to update the terminology of certain products and to delete obsolete items

17. The Committee took note of the fact that the Secretariat's proposal to update headings 85.20 and 85.24 to reflect technological developments and trade realities would be re-examined by the Sub-Committee at its next session.

Annexes C/8 and F/5 - Proposal by the US Administration to amend the Nomenclature concerning cut flowers of heading 06.03

18. The Committee provisionally adopted the texts approved by the Review Sub-Committee.

19. The texts provisionally adopted are set out in Annex L/2 to this Report.

Annex C/9 - Proposal by the US Administration to amend the Nomenclature to Chapter 41

20. The Committee took note of the fact that the Sub-Committee had agreed that no decision should be taken at its 24th Session concerning possible amendments to Chapter 41, as it was felt that further study was necessary, in particular to find out what the exact terminology should be. The Committee also took note of the fact that the Sub-Committee would re-examine this issue at its next session and invited administrations to submit their comments as soon as possible.

Annexes C/10 and F/6 - Proposal by the US Administration to amend the Nomenclature and Explanatory Note to heading 70.13

21. The Committee provisionally adopted the texts approved by the Review Sub-Committee.

22. The texts provisionally adopted are set out in Annex L/3 to this Report.

Annexes C/11 and F/7 - Proposal by the US Administration to amend the Nomenclature and Explanatory Note to heading 84.82

23. After an exchange of views on the US proposal, the Delegate of Japan informed the Committee that his administration wanted to supply more information on this issue before the

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Committee would take a decision. This information would be forwarded to the Review Sub-Committee which would, at its next session, also continue to discuss options to try and provide for a one-dash parts provision and the US proposed break-outs for “parts of tapered roller bearings”, on the basis of a new proposal to be submitted by the US Administration. The Committee accepted the Japanese offer to provide additional information.

Annexes C/12 and F/4 - Proposal by the US Administration to amend the Nomenclature and Explanatory Note to heading 85.19

24. The Committee took note of the developments in regard to this issue.

Annexes C/13 and F/8 - Proposal by the US Administration to amend certain subheadings of heading 87.08

25. The Committee took note of the fact that this matter would be re-examined by the Sub-Committee at its next session, after administrations have had time to consider the texts placed in square brackets.

Annex C/14 - Study of possible amendments to the Nomenclature with regard to the classification of multifunctional digital copiers

26. The Committee took note of the fact that this matter would be examined by the Sub-Committee at its next session on the basis of a proposal to be prepared by the Secretariat.

Annex D/1 - Possible amendment of heading 21.03 to include “salsa”

27. The Committee took note of the fact that the Sub-Committee had decided not to examine this matter further.

Annex D/2 - Study of possible amendments to the Nomenclature with regard to human body parts

28. The Committee took note of the fact that the Sub-Committee had decided to maintain the status quo with regard to human cadavers, and had therefore agreed that no further measures should be taken in this respect.

29. The Committee also took note that, with regard to human organs, tissues, stem cells, etc., the Secretariat had been invited to continue its study of possible amendments to heading 30.01.

Annexes D/3 and F/10 - Possible amendment of heading 85.28 to provide separately for satellite receivers (Proposal by the Egyptian Administration)

30. The Committee took note of the fact that this matter would be re-examined by the Sub-Committee at its next session, on the basis of two alternative texts in square brackets and the results of the Secretariat’s study on the characteristics of the apparatus referred to by the Japanese Administration, and its significance in international trade. Administrations were also invited to send the Secretariat their views on the matter.

Annex D/4 - Possible amendment of Chapter 39 to provide separately for hygienic articles of plastics (Proposal by the Egyptian Administration)

31. The Committee took note of the fact that this matter would be re-examined by the Sub-Committee at its next session, on the basis of more precise information and trade statistics relating to the articles concerned, which administrations were invited to submit.

Annex D/5 - Possible amendment of heading 21.06 to include "food supplements"

32. The Committee took note of the fact that this matter would be re-examined by the Sub-Committee at its next session on the basis of a new working document which the Secretariat had been asked to prepare, with the participation of Contracting Parties, and which would include a proposed definition of "food supplements".

Annexes D/6 and F/9 - Possible amendment of subheading 8311.90 to delete the reference to parts (Proposal by the Egyptian Administration)

33. The Committee provisionally adopted the texts approved by the Review Sub-Committee.

34. The texts provisionally adopted are set out in Annex L/4 to this Report.

Annex D/7 - Possible amendments of the HS Nomenclature and the Explanatory Notes regarding silicones (Proposal by the US Administration)

35. The Committee took note of the fact that the Sub-Committee had unanimously decided to refer this question to the Scientific Sub-Committee, which was to examine the proposed amendments and to comment on whether they were technically correct and whether they would clarify the classification of silicone products.

Annexes D/8 and F/11 - Proposal by the US Administration to delete Note 6 to Chapter 85

36. The Committee provisionally adopted the texts approved by the Review Sub-Committee.

37. The texts provisionally adopted are set out in Annex L/5 to this Report.

Annex D/9 - Proposal by the US Administration to merge headings 95.01 to 95.03 into a single heading for toys

38. The Committee took note of the fact that this matter would be examined further by the Review Sub-Committee at its next session, on the basis of proposals which Contracting Parties were invited to submit to the Secretariat.

Annexes D/10 and F/12 – Editorial Amendments to the English text of the Harmonized System

39. The Committee provisionally adopted the texts approved by the Sub-Committee.

40. The texts provisionally adopted are set out in Annex L/6 to this Report.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

Annex E - Study of Note 5 to Chapter 84

41. The Committee took note of the fact that the Sub-Committee had informally examined the possible amendment of Note 5 to Chapter 84 and the associated headings and noted the various points which had been addressed.

* * *

ANNEX F

REPORT OF THE PRESESSIONAL WORKING PARTY

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0459E1 NC0508B2/A/I	Amendments to the Explanatory Notes to headings 87.03 and 87.04.		<u>See Annex M/7.</u>	

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Subject to several editorial modifications, the Committee adopted the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/7 to this Report.

* * *

1	2	3
NC0460E1 NC0508B2/A/II	Amendments to the Compendium of Classification Opinions arising from the classification of "MYKON ATC Blue" in subheading 3824.90.	<u>See Annex M/8.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee adopted, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/8 to this Report.

* * *

1	2	3	4
NC0461E1 NC0508B2/A/III	Amendments to the Compendium of Classification Opinions and the Explanatory Notes arising from the classification of play tents and play houses in subheading 9503.90.	<u>See Annex M/9.</u>	<u>See Annex M/9.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee adopted, without modification, the texts finalized by the Working Party.
2. The texts adopted are set out in Annex M/9 to this Report.

* * *

ANNEX G

FURTHER STUDIES

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0462E1	Formal adoption of amendments to the Explanatory Notes provisionally adopted at the 27 th Session.		<u>See Annexes M/1, M/2, M/4 and M/10.</u>	

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee formally adopted the amendments to the Explanatory Notes provisionally adopted at its 27th Session, as listed in Annexes I to IV to Doc. NC0462E1.
2. The texts formally adopted are reproduced in Annexes M/1, M/2, M/4 and M/10 to this Report.

* * *

1	2
NC0463E1	Classification of certain repeaters used in LAN systems : Reservation by the US Administration.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The US Delegate began the discussion on this item by reaffirming the fact that the four repeaters in question were used solely in an automatic data processing (ADP) system and functioned to ensure the transmission of uncorrupted data between the ADP machines on a Local Area Network (LAN). This was a data processing function. He reminded the Committee that it had classified hubs, optical fibre converters and routers, which were other types of LAN apparatus used in the transmission of data within a LAN, in heading 84.71 and argued that it should be consistent in its decisions. He then pointed out that these repeaters, just like the other LAN apparatus, fulfilled the criteria set out in Note 5 (B) to Chapter 84. They only functioned within a LAN, and, in his view, it was clear that the repeaters at issue did not have a specific function other than data processing. He concluded by asking the Committee to classify these repeaters in heading 84.71 by application of Note 5 (B) to Chapter 84.
2. Two delegates spoke in favour of the US Administration's position. The EC Delegate referred to Doc. NC0463E1, paragraphs 8 and 18, which outlined the technical characteristics of the repeaters as provided by the manufacturer, as well as the classification reasoning used by the US Administration. On the basis of the information contained in these two paragraphs, as well as a Judgement by the European Court of Justice concerning Case C-463/98, he could support the US position.
3. The Committee then unanimously agreed to classify the four repeaters in question in subheading 8471.80 by application of GIRs 1 (Note 5 (B) to Chapter 84) and 6. The Committee based this conclusion on the description of the goods provided by the manufacturer, which indicated that these repeaters could only be used in a LAN system, as well as the fact that these repeaters did not have a specific function other than data processing and, therefore, Note 5 (E) to Chapter 84 did not apply.
4. To reflect this decision, the Committee instructed the Secretariat to prepare two draft amendments to the Compendium of Classification Opinions for review by the next pre-sessional Working Party. The products for these Classification Opinions would be a multi-mode repeater and a single-mode repeater, which were listed in Annex I to Doc. NC0296E1 as products 3 and 4. In addition, the Secretariat was instructed to draft amendments to the Explanatory Notes for the next Working Party to reflect the fact that repeaters used in LAN systems were classified in heading 84.71 while telephone system repeaters were classified in heading 85.17.

* * *

1	2	
NC0464E1	Classification of certain chemical products relating to the Chemical Weapons Convention.	<u>See Annex O.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening the discussion of this agenda item, a number of delegates expressed the view that the Committee could respond to the request of the OPCW Secretariat by examining the classification of all chemicals listed in the OPCW Handbook, since the Handbook had no legal status. 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.
2. Since there were a number of items left to be examined by the Scientific Sub-Committee and in view of the new information provided by the OPCW Secretariat, some delegates felt that it would be appropriate to allow the Sub-Committee to review the entire list of 932 chemicals on the basis of the 2002 version of the Harmonized System.
3. One delegate expressed doubts as to the classification of certain products examined by the Sub-Committee corresponding to CA RNs. 41203-81-0, 42595-45-9, 873-97-2, 5853-68-9 and 3001-98-7 and indicated that they should be classified in heading 29.34 (subheading 2934.99).
4. The representative of the OPCW Secretariat thanked the Committee for its co-operation. He explained that the issue of whether certain chemicals should be considered to be included under the scheduled chemicals of the Chemical Weapons Convention was a matter that had been debated for some time. He agreed that the Handbook had no legal status and the inclusion or omission of a given chemical did not place any compliance obligation on a Member State under the Chemical Weapons Convention. He further pointed out that this fact had been made clear in the "introduction" to the Handbook. He therefore explained 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 agreement on their status could be reached.
5. He agreed to provide the necessary technical information to the Scientific Sub-Committee in time for its next session in January 2002. He also stated that a better definition of "adducts" than the one used in the document was reflected in Hawley's Condensed Chemical Dictionary and requested that the classification of two other adducts (CA RNs. 73790-51-9 and 84402-58-4) should be reviewed by the Scientific Sub-Committee.
6. The Committee finally agreed to refer the whole list of 932 chemicals to the Scientific Sub-Committee for further examination in terms of the HS 2002 version.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

7. The list of 932 chemicals, as set out in Annex II to the working document is reproduced in Annex O to this Report. The products mentioned in paragraph 3 above and those referred to by the representative of the OPCW in paragraph 5 above have been placed in square brackets (see pages 14, 15, 18, 19, 28, 34 and 38) for the particular attention of the Sub-Committee.

* * *

1	2
NC0465E1	Guidelines with regard to the possible application of GIRs 3 (a) and 3 (c) in the context of the classification of certain chemical products.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening the discussion of this agenda item, one delegate agreed that there was no need to resort to General Interpretative Rule (GIR) 3 to classify the products at issue. In his administration's opinion the commodities at issue could be classified by application of GIRs 1 and 6, i.e., by application of Note 3 to Chapter 29, which stipulated that goods which could be included in two or more of the headings of Chapter 29 were to be classified in that one of those headings which occurred last in numerical order. This would result in the classification of commodities having an oestrogen or progestogen function and an androgen function in subheading 2937.29. A number of delegates shared this view.
2. Responding to this approach, the Director questioned whether GIR 6 allowed the application of Note 3 to Chapter 29 at subheading level, thus leaving the question of whether GIRs 3 (a) and (c) could apply open. He reminded delegates that the first sentence of GIR 3 (a) did not require goods to be mixed or composite.
3. Other delegates took the view that the commodities should be classified in accordance with their main function. There were, however, different views with respect to the main function and with respect to whether or not these chemical products could even be considered as having a dual function, since literature on this issue seemed not to be unequivocal. In this context, one delegate pointed out that the Explanatory Note to heading 29.37, on page 479, indicated that the main hormonal function of Prasterone was the androgen function.
4. Another delegate pointed out that this question had come from the Scientific Sub-Committee, which essentially had raised the question of whether GIR 3 could be used to classify a single substance which had two functions mentioned in two different subheadings. The two substances referred to in the document had been given as examples. In fact, the possibility of applying Note 3 to Chapter 29 would facilitate the classification of a whole series of products of that Chapter. In that connection, he argued that GIR 6 permitted the application of GIR 1 to determine the classification of goods at subheading level, adding in its final sentence that "the relative Section and Chapter Notes also apply". Given that GIR 1 did not refer only to the terms of the headings, but also to the Section and Chapter Notes, the application of Note 3 to Chapter 29 would appear to be appropriate.
5. Following these discussions, the Committee agreed (i) to study the applicability of Note 3 to Chapter 29 and similar Notes elsewhere in the Harmonized System at subheading level (by application of GIR 6), and (ii) to ask the Scientific Sub-Committee to provide more information with respect to the functions of Prasterone and Tibolone.

* * *

1	2
NC0466E1	Classification of bakers' wares (waffles).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening the discussion of this agenda item, the US Delegate emphasised that the HS Committee had been discussing the classification of these products since its 23rd Session (May 1999). Referring to his administration's comments in Doc. NC0466E1, he underlined that "Kellogg's Eggo Frozen Waffles" were fully baked, and that this fact was clearly shown in the illustrations in the Annex to the working document. It was certainly not a batter, as one delegate had suggested during a previous discussion in the Committee with regard to classification of a similar product. Furthermore, he emphasised the fact that there were no standards, international or national, on the water and moisture content for waffles. Since the product at issue was commercially and commonly known as a waffle, presented and traded internationally as a waffle, known by and purchased by consumers in retail stores as a waffle and satisfied the common definition of a waffle (i.e., a bakers' ware baked between patterned metal plates), it should be classified in the Harmonized System as a waffle in subheading 1905.32, regardless of the water content limit relating to waffles in the Explanatory Note to heading 19.05.
2. Many delegates supported his view. In this regard it was pointed out that an Explanatory Note could not function to narrow or broaden the scope of a heading or a subheading. It would seem very strange not to classify this product as a waffle, since it was presented, was traded and tasted like a waffle. It was also mentioned that dietary concerns and eating habits had changed since the preparation of this Explanatory Note, meaning that an elevated water content (and a resulting reduced fat content) was more common in such products than before.
3. On the other hand, many other delegates were of the view that a product containing 45 % water after deepfreezing could not be classified as a waffle. Products containing 10 – 13.7 % water, as referred to in paragraph 25 of the working document, should be classified as waffles (and the Explanatory Notes should be amended accordingly), but 45 % water was too much. In their mind, a product containing so much water had lost the nature of being a waffle. It was also stressed that classifying products by their name or their shape was not a normal practise in the Harmonized System. Classification had to proceed on the basis of the nature of the product.
4. One delegate indicated the contention that there was no limit on the water content of waffles would endanger the distinction made in the HS Nomenclature between the various bakers' wares, such as pastries, cakes, biscuits and waffles. After all, water content was an important criterion which determined how crisp or soft a product was. This was significant, as the new nomenclature differentiated between, inter alia, biscuits and waffles.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

5. One delegate pointed out that the Explanatory Note to heading 19.05 also contained water content limits with regard to other products, such as crispbread and sweet biscuits. He could agree to insert a legal Note as to the water content limit for such products, but as the texts now stood the product at issue had to be classified in subheading 1905.90.
6. After further discussion, the Committee finally decided to classify "Kellogg's Eggo Frozen Waffles" in subheading 1905.90, by 17 votes to 15. After an additional exchange of views, it was agreed that the basis for this decision was GIR 1 and the composition of the product (including the 45 % water content).
7. In order to reflect this decision, the Committee instructed the Secretariat to prepare the following for examination by the next preessional Working Party :
 - (a) a draft Classification Opinion;
 - (b) a draft amendment to the Explanatory Note to heading 19.05, on the basis of the EC proposal in paragraph 34 to Doc. NC0283E1, that would ensure that the products mentioned in paragraph 25 to Doc. NC0466E1 would be classified as waffles. Contracting Parties were invited to submit their proposals in this connection.
8. The Committee also instructed the Secretariat to prepare a document for the next session of the Review Sub-Committee with regard to possible legal text amendments. These amendments should be based on proposals from Contracting Parties to be submitted as early as possible.

* * *

1	2	4
NC0467E1	Amendment of the Explanatory Note to heading 56.06 with a view to defining the scope of the expression "chenille yarn".	<u>See Annex M/5.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee adopted, without modification, the texts proposed by the Secretariat.
2. The texts adopted are set out in Annex M/5 to this Report.

* * *

1	2
NC0468E1	Classification of certain multifunctional digital copiers.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. At the request of the Delegate of Brazil, the Committee agreed to consider the classification of the Xerox Document Centre 230 DC at its 30th Session, together with the other multifunctional digital copier models which were the subject of various reservations. The Committee also agreed not to continue with the examination of the classification of the Océ 3133 since it was no longer manufactured.
2. The Committee heard from a number of delegates on the issue of the principle of how to deal with the classification of products which were no longer being manufactured but were still the subject of some international trade. It agreed to continue its discussion of this issue at its next session on the basis of a document to be prepared by the Secretariat.

* * *

1	2
NC0470E1 NC0502E1	Classification of flash electronic storage cards.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. At the request of one delegate, the Committee agreed to have a preliminary discussion on this agenda item.
2. Two delegates explained that the articles satisfied the terms of heading 85.23 for "prepared unrecorded media". One delegate noted that the "growth of transistors on a silicon layer" (which resulted in an integrated circuit) would fall within the meaning of the term "prepared". The function of the devices was to record and store data (phenomena).
3. Other delegates, while noting that the commodities at issue did not exist when the Harmonized System was being developed, expressed doubts as to whether these goods were indeed covered by the legal text of heading 85.23, on the assumption that they were not merely passive media given that they comprised a control unit permitting a type of active or "intelligent" recording. Under these circumstances, classification in heading 85.43 would be acceptable, although in the future it would be preferable to classify these articles in heading 85.23 or heading 85.24.
4. After further discussion, the Committee concluded that the classification of the devices at issue should be further discussed at the next session, requesting the Secretariat to prepare a new document, in which the descriptions of the devices should also include references to dimensions, capacities and, if possible, brand names. These descriptions would be based on those which appeared in paragraph 5 of Doc. NC0470E1. The Committee also concluded that heading 85.42 could be ruled out from further consideration.

* * *

1	2
NC0471E1	Classification of DVD drives and DVD players, including game players.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Delegates of Japan, Indonesia and China stated that they were ready to discuss the classification of DVD drives and standalone DVD players at the present session but indicated that they were not yet in a position to discuss the classification of game players. The Delegate of Japan indicated that his administration had provided further written information on the "Play Station 2" ("PS2") which had not yet been translated into French. Moreover, he noted that the ICC had provided information that there were no DVD game players on the market. The classification of the "PS2" referred to the Committee as an example of game type DVD apparatus was a new issue. These three delegates therefore felt that this issue should be dealt with as a separate agenda item at the Committee's next session, because the technical information that had been provided on the PS2 to date was insufficient to allow them to give a considered opinion at the present session. The Delegate of Japan indicated that, since the "PS2" was produced in his country, he could submit more detailed technical information on this article for examination by the Committee at its next session.
2. The EC Delegate took note of the request by the three delegations not to take a decision on the classification of the "PS2" at this session. Supported by some other delegates, he argued that the Committee should not be bound by the industry statement that there were no DVD game players on the market. He pointed out that the Committee at its previous session had agreed that the final decisions on the classification of DVD drives, standalone DVD video/audio players and DVD game players would be taken at the present session. At the time of the adoption of the Agenda of present session, no request had been made to postpone the examination of this item. Since the classification of these three groups of articles were closely interrelated, the EC Delegate insisted that the Committee should classify them at the same time, at the present session, or, if the Committee decided to postpone the examination of this agenda item, the whole question should be studied at the next session.
3. The Chairman and the Director noted that this item had been on the agenda of the Committee for quite a long time. As the classification of the articles concerned was an important and urgent matter for administrations and the trade, they urged the Committee to make some progress on the issue.
4. On the basis of the foregoing, the Committee agreed to discuss the classification of DVD drives, standalone DVD players and the "PS2" at its present session but to take a final decision on the classification of these products at its next session.
5. Once again, the Committee agreed that DVD drives exclusively used in conjunction with ADP machines were, in principle, classifiable in heading 84.71 as they fulfilled the conditions laid down in Note 5 (B) to Chapter 84.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. The Committee also agreed that standalone DVD players designed to be used for video reproduction (both images and sound) on television receivers or video monitors were, in principle, classifiable in heading 85.21, provided that they did not have the function of a video game player.
7. As regards the classification of the "PS2", one delegate felt that, based on the information provided in paragraph 5 of the working document and information gathered by his administration, the "PS2" should be considered to be an ADP machine itself and, as such, classifiable in heading 84.71, by application of GIR 1 and Note 5 (A) (a) to Chapter 84. Since an operating system which was common to ordinary ADP machines was used, software other than games could be run on the "PS2".
8. However, several other delegates pointed out that the "PS2" was capable of performing the functions of an ADP machine of heading 84.71, sound reproducing apparatus of heading 85.19, video reproducing apparatus (DVD) of heading 85.21 and a video game player of heading 95.04. Given the fact that the "PS2" was designed to be connected directly to a television receiver (but not an ADP monitor), was presented with a joystick (but not with a keyboard), did not have a hard disk and that the data processing capability of its central processing unit was limited to executing programs written in a few programming languages, it could not be regarded solely or principally as an ADP machine within the meaning of the Harmonized System. Any machine having "data processing capability" would not necessarily be classified in heading 84.71 in all cases. The "PS2's" principal function was playing video games and thus it should fall in heading 95.04 by application of GIRs 1 and 3 (b).
9. Although there was a tendency among delegations having expressed their views to classify the "PS2" in heading 95.04, the Committee agreed to re-visit this matter at its next session on the basis of the further information to be provided by Japan. This information should include all the technical data available on the "PS2", as well as a clarification of whether there was one or more than one version of the "PS2" currently traded around the world.
10. The Secretariat was instructed to prepare a new document, containing precise descriptions of DVD drives, standalone DVD players and the "PS2", for examination by the Committee at its next session at which time a final decision on the classification of these articles would be taken.

* * *

1	2
NC0393E1 NC0413E1 NC0414E1 NC0418E1 NC0429E1 (HSC/27) NC0453E1 NC0503E1	Possible amendments to the Explanatory Notes with regard to various women's and girls' garments.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

Given the late arrival of the new comments from the US Administration and at the request of the US Delegate, the Committee decided to postpone discussion of this agenda item until its next session in May 2002.

* * *

1	2
NC0473E1 NC0505E1	Classification of a reinforcement grid called "Fortrac 35/35-40".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Chairman opened the discussions on this agenda item by pointing out that the question still to be examined by the Committee was the appropriate classification within Chapter 39 of the "Fortrac 35/35-40" reinforcement grid.
2. The US Delegate reiterated his view that there was nothing in Note 10 to Chapter 39 or in the text of heading 39.21 to prevent this product from being classified in heading 39.21 as a sheet. He added that nothing in the Harmonized System, or in the common understanding of the term "sheet", conflicted with the generally-accepted definition of that term, i.e., a "thin, flat, piece of metal or of another substance". He concluded from this that the "Fortrac 35/35-40" reinforcement grid should be classified in heading 39.21.
3. However other delegates considered that, regardless of the various possible definitions of the terms "plates" and "sheets", the product at issue did not have the appearance of a sheet. It could not be classified in heading 39.21 as a sheet, because it did not comply with the terms of Note 10 to Chapter 39. They also pointed out that even if the product at issue was a sheet, Note 10 would not permit its classification in heading 39.21 because it would be regarded as "otherwise worked".
4. Following this exchange of views, the Committee decided by a large majority to classify the "Fortrac 35/35-40" reinforcement grid in heading 39.26 (subheading 3926.90).
5. At the request of the Delegate of Poland, the Committee instructed the Secretariat to prepare a draft amendment to the Compendium of Classification Opinions to reflect this decision, for examination by the next preessional Working Party.

* * *

1	2
NC0397E1 NC0417E1 (HSC/27) NC0455E1 NC0498E1 NC0500E1	Classification of the "Palm V™".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. In the light of additional information showing that the technical characteristics of the "Palm V™" were consistent with the criteria laid down in Note 5 (A) to Chapter 84 concerning automatic data processing machines, the Committee unanimously decided to classify the device in subheading 8471.30 by application of General Interpretative Rules 1 and 6. The Committee made it clear that this decision related exclusively to the "Palm V™" as described in the working documents.
2. However, the Director noted that, in Doc. NC0310E1 (HSC/26), the device in question was described as being put up for retail sale in the form of a set with a charger/connector (cradle) and software. He therefore invited the Committee to rule on this particular case.
3. An expert from the ICC explained that the charger/connector in question could only be used with the "Palm V™" and that the latter, delivered with preloaded software, could be used directly, even in the absence of an installation disk (CD ROM).
4. In the course of the discussions to which the classification of the set in question gave rise, one delegate noted that, because the media with the software could not be used in the "Palm V™", the media would be classified with the "Palm V™" and the cradle as a set by application of Note 6 to Chapter 85 (HS 2002). Other speakers however took the view that, by application of the very same Note 6 to Chapter 85, the software should be classified in its own heading, in this particular case heading 85.24. In the opinion of yet other delegates, the scope of this rule needed to be studied in greater depth.
5. Finally, the Committee decided :
 - (c) during the present session, to confirm the classification of the "Palm V™", as such, in subheading 8471.30 by application of GIR 1 (Note 5 (A) to Chapter 84) and GIR 6, and
 - (d) for the next session, to instruct the Secretariat to prepare a new document on the "Palm V™" presented in the form of a set with a charger/connector (cradle) and installation software; this study would have to pursue two new lines of inquiry concerning : (1) the interpretation to be given to Note 6 to Chapter 85 and (2) the classification of certain sets from which certain components that needed to be classified separately had been removed (incomplete sets).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. The Committee also agreed not to prepare a Classification Opinion until the sets question had been finally settled.

* * *

1	2
NC0475E1	Classification of an electric stainless steel chafing dish.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Chairman began the discussion of this agenda item by recalling that at its 24th Session (October 1999) the Committee had classified a non-electric stainless steel chafing dish in subheading 7323.93.
2. The examination of this issue (classification of an electric stainless steel chafing dish), which had been included on the Agenda for the 27th Session (May 2001), had been postponed to the present Session in order to carry out a further study on the basis of new information to be provided by administrations. Additional information and analysis had been provided by the Swiss Administration and the Secretariat.
3. Based on this additional information and the classification analysis of the Secretariat in the working document, the Committee unanimously agreed to classify the electric stainless steel chafing dish in subheading 8516.79, by application of GIRs 1 and 6.

* * *

1	2
NC0476E1	Classification of a radio equipment (transmitter/receiver) assembly.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee began its discussion by clarifying the conditions under which the equipment at issue was presented for Customs clearance. In this respect, it was pointed out that the three modules in question, namely (1) the central unit (reference SRT 1/6 EM/REC 128 TCM), (2) the switching system (reference SPS 155 SDH/DPH) and (3) the network management module were imported at the same time but presented to Customs separately from a pre-existing telecommunications network.
2. On the basis of this information, the EC Delegate felt that the equipment was a functional unit intended to link two telecommunications installations by electro-magnetic waves. Such a function was covered by the legal text of heading 85.25, in which he proposed classifying the whole "assembly", by application of Note 4 to Section XVI. He pointed out that for the purposes of the Harmonized System, goods had to be classified in the state in which they were presented to Customs, without taking account of what would happen to them subsequently in the context of their end-use.
3. Referring to his administration's comments set out in the Annex to Doc. NC0476E1, the Delegate of Senegal was in favour of classifying all the equipment at issue in heading 85.17, also by application of Note 4 to Section XVI, explaining that the equipment was designed to be incorporated into a digital telecommunications network.
4. At this point the Delegate of France provided additional technical information clarifying that :
 - (e) the transmitter/receiver module and the switching module were each housed in a bay, and the bays were connected to each other by cables; and
 - (b) the network management module consisted of interface cards known as MCFs (Message Communication Functions), which were connected to the other units by the "backplane" printed circuits with which those units were equipped. The MCFs were identical for the SRT1 and SPS155 equipment. Each MCF within the network management module had programmable storage specific to a particular application. The integrated circuits on the MCFs were activated by appropriate software.
5. In the light of this information, one delegate pointed out that the system's central unit was a transmitter/receiver which was explicitly covered by heading 85.25. He then pointed out that the switching module had to be connected to the central unit and was intended to detect any potential anomalies. As for the management module, it was made up of complex network cards to be incorporated into the other apparatus. He felt that it was the central transmitter/receiver unit which conferred the whole its essential character in accordance with Note 4 to Section XVI. He was therefore in favour of classifying the whole as a functional unit of heading 85.25, by application of Note 4 to Section XVI.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. A number of other delegates however supported the Secretariat's compromise proposal and reasoning in the working document and thus favoured the separate classification of the three modules in question.
7. After further discussion, the Chairman proposed that the classification of the three modules, as described in paragraph 2 of Doc. NC0476E1, be put to a vote.

The Committee decided :

- (a) by 24 votes to 7 : that the three modules should be regarded as constituting a functional unit within the meaning of Note 4 to Section XVI,
 - (b) by 26 votes to 2 : that this functional unit should be classified in heading 85.25 (rather than in heading 85.17) and, more specifically, in subheading 8525.20 as transmission apparatus incorporating reception apparatus, by application of the above-mentioned legal Note.
8. Finally, the Committee wished it to be noted that this classification was valid for both the 1996 and the 2002 versions of the HS. In order to give effect to its decision, the Committee instructed the Secretariat to prepare a draft Classification Opinion which would be examined, in the first instance, by the next pre-sessional Working Party.

* * *

1	2
NC0477F1	Classification of certain electronic memory modules (SIMMs and DIMMs).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. While confirming the classification of DRAM modules in heading 85.42, the Committee agreed that SIMMs and DIMMs were not microassemblies or micromodules of heading 85.42 since they did not consist of discrete components as required by Note 5 (B) (c) to Chapter 85. Moreover, the Committee also agreed that SIMMs and DIMMs did not have an individual function.
2. Thereupon, several delegates indicated that they were in favour of classifying SIMM and DIMM modules in heading 84.73, maintaining that they could only be used with automatic data processing (ADP) machines.
3. Other delegates, however, pointed out that the modules in question had applications in machines other than ADP machines.
4. Finally, by application of Note 2 to Section XVI, the Committee decided that :
 - (a) SIMMs and DIMMs suitable for use principally or solely with ADP machines were to be classified in heading 84.73 as parts of ADP machines,
 - (b) SIMMs and DIMMs suitable for use principally or solely with other specific kinds of machines or with a number of machines of the same heading were to be classified as parts of those machines or groups of machines, and
 - (c) where it was not possible to determine principal use, SIMMs and DIMMs were to be classified in heading 85.48.
5. Taking into consideration the fact that no specific product had been examined under this agenda item, the Committee invited the Secretariat to prepare a draft amendment to the Explanatory Notes to reflect its decisions, for examination at the Committee's 29th Session.

* * *

1	2
NC0478E1	Classification of foot-propelled scooters.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee examined the classification of various types of foot-propelled scooters in accordance with the questions posed by the Secretariat in paragraphs 27 to 29 of Doc. NC0478E1.
2. Type 1 : Two- or three-wheeled scooters designed to be ridden by children, with non-adjustable steering column, small solid or inflatable wheels, sometimes equipped with bicycle-type handle-bar and/or a hand brake (see Doc. NC0478E1, Annex II, Pictures A and B and Annex I, Pictures D and E) : The Committee unanimously decided that this type of scooter was classifiable in heading 95.01 by application of GIR 1.
3. Type 2 : Two- or three-wheeled (e.g., the “Razor” type) scooters designed to be ridden by children, youngsters and adults, with adjustable steering column, small solid front and rear wheels and generally a foot brake on the rear wheel (see Annex I to Doc NC0478E1, Picture A (Kick Inline) and the Annex to Doc. NC0405E1 (“Razor”)) :
 - (a) One delegate expressed his administration's view that this type of scooter was classifiable in heading 95.01 because the heading text required that the products of this heading be "wheeled toys designed to ridden by children". As this type of scooter could be and actually was ridden by adults, it obviously was not designed to be ridden by children, but rather by adults. Therefore, his administration believed that this type of scooter was classifiable in heading 87.16.
 - (b) Several other delegates believed that this type of scooter was marketed and used for recreation, sports and amusement. Although they were based on the same design as traditional children's scooters of heading 95.01, this heading was restricted to wheeled toys to be ridden by “children”. Therefore, they would be classifiable in heading 95.06.
 - (c) However, many other delegates did not agree with the view that heading 95.01 was restricted to wheeled toys designed to be ridden only by children, because the terms of this heading did not include any restriction as to the use of the articles of this heading “exclusively” by children. Therefore, use of the scooters at issue by adults for transport purposes on an occasional basis would not change their classification. These delegates added that, according to the first paragraph of the General Explanatory Note to Chapter 95, this Chapter covered toys of all kinds whether designed for the amusement of “children or adults”. They further noted that the “mini-vehicles” referred to in Classification Opinion 9501.00/1 were designed to be used by “children and young people”.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

(d) On the basis of the foregoing, the Committee first decided, by 31 votes to 2, that Type 2 scooters were classifiable in Chapter 95 and not in Chapter 87. Following this decision, the Committee finally classified, by 25 votes to 8, the scooters concerned in heading 95.01 by application of GIR 1.

4. Type 3 : Bicycle-like two- or three-wheeled scooters designed to be ridden by youngsters and adults, generally with adjustable bicycle-type handle-bar, bicycle-type front and rear inflatable wheels and bicycle-type hand brakes (see Annex I to Doc. NC0478E1, Pictures B, C, F and G) : As the Committee did not believe that these “unusual” types of scooters were currently marketed to a considerable extent, it decided that there was no need to classify them in the context of this agenda item. Any difficulty that might be encountered in the future in respect of their classification could be dealt with by the Committee as a separate issue.
5. Type 4 : Pedal-driven bicycle-like scooters designed to be ridden by children, youngsters and adults, with bicycle-type adjustable steering column and handle-bar, inflatable wheels, frame and hand brakes. They are equipped with a single pedal attached chain and sprocket system (see Annex I to Doc. NC0478E1, Picture H) : The Committee unanimously decided that this type of scooter was classifiable in heading 87.12 by application of GIR 1.
6. Type 5 : Three-wheeled scooter trolleys designed for the transport of goods, with non-adjustable steering column, small solid wheels (two at the front and one at the rear), a platform on the two front wheels for loading goods and a foot brake on the rear wheel (see Annex II to Doc. NC0478E1, Picture C) : The Committee unanimously decided that this type of article was classifiable in subheading 8716.80 by application of GIRs 1 and 6. However, they could not be considered as true foot-propelled scooters, but trolleys.
7. After the explanations given by the Delegates of Finland, Norway and Sweden and by the Chairman, the Committee unanimously classified “kicksleds” in subheading 8716.80 as non-mechanical vehicles, by application of GIRs 1 and 6.
8. To reflect its classification decisions, the Committee instructed the Secretariat to draft :
 - (a) one Classification Opinion on the Type 1 “Two-wheeled scooter for children ages 4 to up” in Picture A, Annex II to Doc. NC0478E1; and
 - (b) one Classification Opinion on the “Razor” (Type 2) scooter in the Annex to Doc. NC0405E1;for examination by the next presessional Working Party; and
 - (c) amendments to the Explanatory Notes, relevant to the above decisions, for examination by the Committee itself at its next session.

* * *

1	2
NC0479E1 NC0504E1	Classification of a passenger motor vehicle with a “hybrid” power system.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee unanimously agreed that the “Toyota Prius” motor vehicle with a “hybrid” power system (with both a “gasoline” engine and an electric motor) was classifiable in subheading 8703.22 (engine capacity 1,497 cc). However, opinions were divided as to the legal basis for the decision.
2. Several delegates favoured the application of GIRs 1 and 6, explaining that a motor vehicle of heading 87.03 “with” a spark-ignition internal combustion reciprocating piston (“gasoline”) engine would fall in subheading 8703.2. According to their interpretation, the terms of this subheading only required the presence of a “gasoline” engine. Presence of a second source of power would not preclude classification within this subheading.
3. Many other delegates, however, pointed out that the “hybrid” power system of the motor vehicle in question had a “gasoline” engine and an electric motor as its components. A motor vehicle of heading 87.03 would fall in subheading 8703.2 if it had only a “gasoline” engine and in subheading 8703.90 if it had only an electric motor. Since the application of GIR 1 would disregard the existence of subheading 8703.90, it was necessary to apply GIR 3. In their view, subheadings 8703.2 and 8703.90 had to be regarded as equally specific and, thus, it was necessary to apply GIR 3 (b). Finally, since the “gasoline” engine was more powerful than the electric motor and the role of electric motor was mainly to reduce fuel consumption, the essential character of the “hybrid” power system would be provided by the “gasoline” engine according to GIR 3 (b).
4. When the question was put in vote, the Committee first decided, by 27 votes to 4, that in this particular case, the legal basis for its classification decision would be GIRs 3 and 6 and not GIRs 1 and 6. Since subheadings 8703.2 and 8703.90 would be regarded as equally specific, the Committee unanimously agreed that GIRs 3 (b) and 6 would apply.
5. To reflect its decision, the Committee requested the Secretariat to draft a Classification Opinion for examination by the next preessional Working Party.
6. It was also agreed that the administrations wishing separate identification of motor vehicles with a “hybrid” power system in the Harmonized System could send their proposals to the Review Sub-Committee.

* * *

1	2	4
NC0419E1 (HSC/27) NC0480E1	Study to distinguish the processors and coprocessors of heading 84.71 from those of heading 85.42 in the context of the amendment of the Explanatory Note to heading 84.71.	<u>See Annex M/10.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. After some discussion, the Committee adopted unanimously the Explanatory Notes text presented as the first option in the Annex to Doc. NC0480E1. The exclusion paragraph included in that option was, however, deleted, given the fact that it more or less duplicated exclusion (d) of the last paragraph of the Explanatory Note to heading 84.71.
2. The texts adopted are set out in Annex M/10 to this Report.

* * *

ANNEX H
NEW QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NC0421E1 (HSC/27)	Classification of a mixed grease product.			

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee unanimously agreed to classify this mixed product, consisting of 80 to 90 % rendered pork fat (lard) and 10 to 20 % beef tallow, in heading 15.17 (subheading 1517.90), by application of GIR 1 (text of heading 15.17).
2. In order to reflect this decision, and at the request from the US Delegate, the Committee instructed the Secretariat to prepare a draft Classification Opinion for examination by the next presessional Working Party.

* * *

1	2
NC0423E1 (HSC/27)	Classification of car safety seats for infants and toddlers.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O Fr.)

1. The Chairman opened the discussion by pointing out that the examination of this question had been deferred to the present session because of the late publication of the working document for the 27th Session.
2. The Committee unanimously agreed that the seats at issue should be classified in heading 94.01. The question to be decided was in which subheading these seats should be classified - 9401.20 as seats of a kind used for motor vehicles, or one of the other subheadings.
3. After apologizing for failing to supply the descriptive literature mentioned in his administration's Note on the subject, the US Delegate stated that the product description which appeared in paragraph 10 of the working document did not appear to accurately describe the article which his administration wanted the Committee to classify. He therefore suggested the following alternative text : "Car safety seats designed for the carriage of infants and toddlers in motor vehicles. They are removable and are attached to the vehicle's seats by means of the seat belt and a tether strap".
4. He added that his administration would classify the article thus described in subheading 9401.20 by application of GIRs 1 and 6. In his administration's opinion, these were seats of a kind used for motor vehicles, and were specifically designed for that purpose. There appeared to be nothing in the legal texts which would restrict the scope of this subheading to original motor vehicle equipment seats. This view was shared by a certain number of delegates.
5. Another delegate, supported by several others, considered that it was not possible, on the basis of the information available to the Committee, to decide on the classification of this article at subheading level. Subheading 9401.20 appeared to be restricted to original motor vehicle equipment seats, permanently fitted by the vehicle manufacturer, equipped with anchor points and having a conventional format. These safety seats for infants and toddlers, as described in the working document, could be used in various places - including motor vehicles - and could not be regarded as specifically designed for motor vehicles. Consequently, he would be inclined to classify them in subheading 9401.80.
6. Another delegate, while agreeing with the previous speaker and with the Secretariat that these seats should not be classified in subheading 9401.20, asked the Committee to also consider subheading 9401.79 for their classification, given that the frames on some models might be made of metal. If that were the case, then subheading 9401.79 would seem more specific than subheading 9401.80.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

7. As some doubts remained with regard to the identification of the car safety seats for infants and toddlers in question, and given the differing views expressed within the Committee on how to interpret the scope of the relevant subheadings in heading 94.01, the Committee agreed to return to this question at its next session. The US Administration was invited to submit the necessary information on the subject as soon as possible, taking care to identify the articles which it would like the Committee to classify, so that the Secretariat could prepare a new document for the HSC's next session.

* * *

1	2
NC0483E1	Classification of certain modified starches or sizing preparations.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening the discussion of this agenda item, one delegate informed the Committee that based on the information received from certain starch manufacturers, the existing Explanatory Notes and the legal texts were clear enough to classify these modified starches. He indicated that it was his understanding that the products in question had been mixed with other substances for specific uses and therefore, as indicated in the Explanatory Note to heading 38.09 (Item B (2)), they should be classified in heading 38.09.
2. Two other delegates also expressed a view in favour of classifying these six products in heading 38.09 rather than in heading 35.05.
3. One delegate, however, stated that these modified starch products did not appear to be mixed with other substances and therefore expressed the view that they should be classified in heading 35.05 as modified starches.
4. Yet another delegate felt that the information provided was not sufficient to decide the classification of these products and proposed to submit this question to the Scientific Sub-Committee in order to obtain its technical views. The Committee agreed that additional information was needed before it could take an informed decision.
5. The Committee finally agreed to study this classification question further on the basis of more information (e.g., whether substances have been added to modified starches) to be provided by the Colombian Administration and/or the manufacturers. The Committee also agreed to request the Scientific Sub-Committee to provide its technical views on the scope of headings 35.05 and 38.09.

* * *

1	2
NC0484E1	Possible amendment of the Explanatory Notes to clarify the classification of vitamin preparations in the Harmonized System.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Many delegates expressed the view that classification of vitamin preparations in the Harmonized System often caused problems, sometimes because the texts of the Harmonized System were not clear enough, but more often because national health authorities in many countries had another view than Customs authorities with regard to the definition of medicaments. In this regard it was pointed out that since health regulations might vary from country to country, it was extremely important to classify such products by application of the rules laid down in the Harmonized System.
2. Most of these delegates were of the opinion that classification of such products had to be determined on a case by case basis, taking into account several criteria. In this regard one delegate mentioned that in his country the following criteria were normally used :
 - the amount of vitamins or minerals in the product and the recommended daily intake (by international health organizations) of these vitamins or minerals;
 - the labelling on the products, e.g., with regard to dosage and warnings; and
 - the opinion of the national health authorities with regard to these products.
3. As to the classification of the product at issue ("Nature Made® Vitamin C 500 mg Supplement with Rose Hips" (tablets)), all delegates that spoke, except one, expressed the view that this product had to be classified in heading 21.06. In their opinion this product, which contained ingredients (other than vitamins) which were not allowed according to the provisions of Note 1 to Chapter 29, had to be excluded from heading 29.36. Furthermore, by application of Note 1 (a) to Chapter 30, classification in heading 30.04 was not possible.
4. One delegate, however, informed the Committee that his administration had in the past classified such products in heading 21.06, but since the courts in his country had recently decided to classify such products as medicaments, he could not support classification in heading 21.06.
5. When the question was put to a vote, the Committee decided, by 26 votes to 1, to classify "Nature Made® Vitamin C 500 mg Supplement with Rose Hips" (tablets) in heading 21.06 (subheading 2106.90).
6. In order to reflect this decision, the Committee instructed the Secretariat to prepare a draft Classification Opinion for examination by the next presessional Working Party. In this connection, and the publication of this decision on the WCO Web site, the description of the product should be amplified to indicate that the label of the product stated that "these products are not intended to diagnose, treat, cure or prevent any disease".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

7. At the request of some delegates, the Secretariat was also instructed to prepare draft amendments to the Explanatory Notes (in particular the Explanatory Note to heading 29.36), with a view to clarifying the classification of vitamin preparations. In this regard, interested Contracting Parties were invited to send in their proposals as soon as possible.
8. Administrations that were interested in modifying the legal texts with regard to the classification of vitamin preparations were requested to submit proposals to the Review Sub-Committee.
9. Finally, some delegates indicated that their administrations had experienced no problems in classifying vitamin preparations. Therefore, they did not see a need to amend the Explanatory Notes and preferred the status quo.

* * *

1	2	4
NC0485E1	Possible amendment of the Explanatory Notes to clarify the classification of pisco and singani in the Harmonized System.	<u>See Annex M/3.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee unanimously agreed to insert references to pisco and singani in the Explanatory Note to heading 22.08 as examples of “spirits obtained by distilling grape wine”. The texts proposed by the Secretariat were therefore adopted without modification.
2. The texts adopted are set out in Annex M/3 to this Report.

* * *

1	2	4
NC0486E1	Possible amendment of the Explanatory Notes to headings 84.50 and 84.51 to clarify the classification of laundry type and industrial washing machines (Proposal by the Egyptian Administration).	<u>See Annex M/11.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee unanimously agreed to the Secretariat's proposal for amendment of the Explanatory Note to heading 84.51, Item (A) (1), as presented in the Annex to Doc. NCO486E1.
2. The Committee also instructed the Secretariat to draft a working document for its next session with a view to clarifying the classification of laundry type and industrial washing machines in the Explanatory Notes, taking into account the Secretariat's comments in paragraph 3 of Doc. NC0486E1. In this regard, one delegate indicated that it would be useful to provide information in the working document for the next session on specific examples of industrial washing machines that were included in heading 84.51.
3. Another delegate stated that in drafting the Explanatory Note, the Secretariat should indicate that the washing machines of heading 84.51 were used in the manufacturing and finishing of textile yarns, fabrics or made up textile articles, as distinguished from those in heading 84.50, which were used in laundry situations, to clean soiled linens, etc.
4. The text adopted is set out in Annex M/11 to this Report.

* * *

1	2
NC0488E1	Possible amendment of the Explanatory Notes to Chapter 48 to clarify the classification of so-called "photo-copying paper" (Proposal by the Egyptian Administration).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

At the request of one delegate, the Committee decided to postpone the discussion of this issue to the next session, thus leaving administrations time to further consult with their industry concerning the proposed wording of the proposed amendments to the Explanatory Notes.

* * *

1	2	4
NC0489E1	Possible amendment of the Explanatory Notes to Chapter 33 to exclude candles of heading 34.06 (Proposal by the Egyptian Administration).	<u>See Annex M/12.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. The Committee unanimously agreed to the amendment of the Explanatory Note to heading 33.07, as drafted by the Secretariat in response to the Egyptian proposal.
2. The text adopted is set out in Annex M/12 to this Report.

* * *

1	2
NC0451E1	Classification of quartz reactor tubes and holders designed for insertion into diffusion and oxidation furnaces for the production of semiconductor wafers (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee examined the classification of quartz reactor tubes and holders, on the basis of Doc. NC0451E1, and agreed with the Secretariat that these articles should, by application of Note 5 to Chapter 70, be treated as articles of glass and classified in that Chapter.
2. A number of delegates felt that by their nature, quartz reactor tubes corresponded to the very broad definition of laboratory glassware. These articles ought therefore to be classified in heading 70.17, rather than in heading 70.20 which was a residual heading. It was also stressed that classification in a heading other than 70.17 of this type of quartz article with very specific characteristics (including high purity, resistance to temperature and corrosion and compatibility of physical properties) might result in the removal from subheading 7017.20 of some of the products currently classified therein.
3. However, other delegates pointed out these tubes were used for industrial purposes and did not correspond to the definition of laboratory glassware. Hence they were not articles of glassware of the type generally used in laboratories, but rather industrial articles, to be classified as glassware for industrial use in heading 70.20.
4. After discussion, the Committee agreed, by 18 votes to 13, to classify the quartz reactor tubes in heading 70.20.
5. As for the quartz holders, the Committee also agreed to classify them in heading 70.20.
6. The Secretariat was instructed to inform the WTO of the Committee's decisions regarding the classification of these articles.

* * *

1	2
NC0472E1	Classification of parts of machines for sawing monocrystal semiconductor boules into slices, or wafers into chips (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening the discussion of this agenda item, the Observer for the WTO clarified the fact that the commodities referred to in the WTO's submission should be regarded as examples, rather than as specific commodities for which HS classification was requested. She further clarified that, in the discussions in Geneva, the principle of differentiating between "parts" on the one hand and "accessories" on the other hand had come up in relation to the provisions of heading 84.66, which covered "parts and accessories" of certain machines. The question, therefore, was whether a distinction could be made between these two terms in that heading, in Chapter 84 or elsewhere in the Harmonized System.
2. In this context, one delegate, while pointing out that the issue originated from the Information Technology Agreement (which referred to certain "machines and parts", but did not mention "accessories"), stressed that duty treatment was not an issue for the HS Committee but for the WTO.
3. Delegates agreed that heading 84.66 covered "parts and accessories". However, those terms were not defined for purposes at that heading or elsewhere at legal level in the Harmonized System. The drafters of the Harmonized System had generally found it advantageous not to distinguish between parts and accessories. While there were some descriptions of "accessories" in the Explanatory Notes (e.g., the Explanatory Note to heading 84.66), these descriptions were published as a guide and had no legal force.
4. With respect to the possible classification of the commodities described in the working document, the Committee agreed not to take up this issue, given the clarification of WTO.
5. The Committee concluded that the WTO could be informed as follows :
 - (a) There were no legal definitions of the terms "parts" and "accessories" in the Harmonized System;
 - (b) At the request of WTO, the Committee would be prepared to take up the classification of commodities being parts or accessories of machines in Chapter 84, once it had received a full description of the commodities in question.

* * *

1	2
NC0474E1	Classification of parts of dicing machines for scribing or scoring semiconductor wafers (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Following the clarification of the Observer from the WTO that the commodities referred to in the WTO's submission should be regarded as examples, rather than as specific commodities for which HS classification was requested, the Committee agreed not to take up this issue since the principal question had been addressed under Agenda Item VIII.11. See also Annex H/10 to this document.

* * *

1	2
NC0481E1	Classification of parts of laser cutters for cutting contacting tracks in semiconductor production (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Following the clarification of the Observer from the WTO that the commodities referred to in the WTO's submission should be regarded as examples, rather than as specific commodities for which HS classification was requested, the Committee agreed not to take up this issue since the principal question had been addressed under Agenda Item VIII.11. See also Annex H/10 to this document.

* * *

1	2
NC0482E1	Classification of parts of apparatus for stripping or cleaning semiconductor wafers (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Following the clarification of the Observer for the WTO that the commodities referred to in the WTO's submission should be regarded as examples, rather than as specific commodities for which HS classification was requested, the Committee agreed not to take up this issue since the principal question had been addressed under Agenda Item VIII.11. See also Annex H/10 to this document.

* * *

1	2
NC0491E1	Classification of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. One delegate explained to the Committee that, as the products under consideration could perform two or more complementary or alternative functions, classification should be determined in accordance with Note 3 to Section XVI. In his opinion, the principal function of the products was provided by the etching function and the transport/handling and/or storing functions, as well as the cleaning function, were merely subsidiary or auxiliary processes to the etching of the pattern on the wafer.
2. He explained to the Committee the process involved in etching which, in his opinion, was more than a surface-treatment described in the Explanatory Notes to heading 84.79. Etching was a process which removed material from the wafer and, for that reason, it was covered for by the terms of heading 84.64. In his opinion, the question to be answered by the Committee was whether etching by a chemical treatment was a function covered by machine tools of heading 84.64. It was his administration's view that the text of heading 84.64 did not place any restriction on the means of etching glass and, as a consequence, the etching of the wafer was a process which was covered by heading 84.64.
3. Another delegate drew the Committee's attention to the Explanatory Notes to heading 84.79, wherein examples were provided of products which performed cleaning or stripping functions. While not identical to the product under consideration, in his view it was important to note that these functions were identified as being functions provided for in heading 84.79. Turning to the products at issue, he referred to paragraph 7 of Doc. NC0491E1 and agreed with the Secretariat that the functions of cleaning and etching the silicon wafer surface were not specifically mentioned in any of the headings in Chapter 84. Consequently, in his view, the products should be classified in subheading 8479.89 by application of Note 3 to Section XVI. A number of other delegates took the floor in support of this classification.
4. By a vote of 27 to 1, the Committee classified the Dainippon Wet Stations WS-620C and WS-820C in subheading 8479.89 by application of GIRs 1 (Note 3 to Section XVI) and 6, on the basis that the cleaning and etching functions provided the products' principal function. The Committee instructed the Secretariat to inform the WTO of its decision.
5. The Chairman then referred to paragraphs 16 and 18 of Doc. NC0472E1, wherein the Secretariat had expressed concern over the fact that HS classification discussions were being held in international forums outside WCO. In his view, the WTO had followed the correct procedure in submitting these classification questions to the WCO.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

6. In response to the Chairman's statement, the WTO Observer provided the Committee with some background on the WTO's classification requests. She referred to paragraph 5 of the Ministerial Declaration on Trade in Information Technology Products which provided the basis for the WTO to look into classification divergences. In this regard, she noted that the WTO attempted to reach agreement on classification divergences first within the WTO so as to avoid flooding the HSC with classification requests. For those classification divergences where agreement could not be reached, the WTO forwarded them to the WCO for a classification decision. She stated that the WTO did not intend to be in the business of classifying products and indicated that it may, in the future, forward other classification divergences to the WCO for a classification decision.
7. The Director thanked the WTO Observer for her explanation and background information on the WTO's classification requests. He appreciated the WTO's attempt to minimize the number of classification requests that would be forwarded to the WCO but, at the same time, emphasized that the WCO was ready and willing to continue to assist the WTO with regard to any classification assistance it might require.

* * *

1	2
NC0492E1	Classification of parts of apparatus for wet etching, developing, stripping or cleaning semiconductor wafers and flat panel displays (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Following the clarification by the Observer for the WTO that the commodities referred to in the WTO's submission should be regarded as examples, rather than as specific commodities for which HS classification was requested, the Committee agreed not to take up this issue since the principal question had been addressed under Agenda Item VIII.11. See also Annex H/10 to this document.

* * *

1	2
NC0493E1	Classification of parts of machines for bending, folding and straightening semiconductor leads (Request from the WTO).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

Following the clarification of the Observer for the WTO that the commodities referred to in the WTO's submission should be regarded as examples, rather than as specific commodities for which HS classification was requested, the Committee agreed not to take up this issue since the principal question had been addressed under Agenda Item VIII.11. See also Annex H/10 to this document.

* * *

1	2
NC0494E1	Classification of fresh strawberries preserved by means of a protective gas.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Following the Chairman's introduction of this question, the Delegate from Switzerland informed the Committee that this classification question had been submitted with the intention of achieving uniform international classification of such products, and of other fresh products preserved similarly.
2. The Committee unanimously agreed to classify fresh strawberries preserved by means of a protective gas in heading 08.10 (subheading 0810.10).
3. In order to reflect this decision, the Committee instructed the Secretariat to prepare draft amendments to the Explanatory Notes for examination by the next preessional Working Party.

* * *

1	2
NC0495E1	Classification of flooring panels.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Opening this agenda item, the Delegate of Indonesia reiterated his administration's position that the commodity at issue was solely designed and principally used as flooring panels, and, therefore, classifiable in heading 44.18. Given the fact that the production method was relatively new, he suggested amending the Explanatory Note to that heading with a view to clarifying the classification of the panels.
2. Some other delegates referred to the decision taken by the Committee at its 18th Session, i.e., to classify the panels in heading 44.12 and to amend the Explanatory Notes to that heading and to heading 44.18. They felt that this decision was correct and that a legal amendment would be the only possibility to reclassify the products in heading 44.18.
3. After this exchange of views, the Chairman concluded (i) that there was no support for the proposal to amend the Explanatory Note to heading 44.18 and to classify the panels in that heading, and (ii) that the Committee had confirmed its previous decision. Administrations that wished to have the text of heading 44.18 amended, were invited to submit their proposals to the Review Sub-Committee.

* * *

1	2
NC0496E1	Classification of watermelon seeds.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. Several delegates expressed their support for the Secretariat's view that since watermelons were regarded as fruit within the context of the Harmonized System, watermelon seeds should be classified in subheading 1209.99 ("other"), not in the subheading for vegetable seeds (1209.91).
2. The Committee decided by a large majority that watermelon seeds should be classified in subheading 1209.99 ("other") by application of GIRs 1 and 6.

* * *

1	2
NC0497E1	Classification of MP3 players.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. At the request of one delegate, the Committee agreed to hold only a preliminary discussion on this issue.
2. Opening the discussion, it was pointed out by one delegate that the Secretariat had raised a basic question, i.e., whether the transcription of data onto data media could constitute the "recording of sound". In his view, this question could be answered in the affirmative for the devices incorporating a flash memory. The Secretariat had based its arguments on a traditional interpretation of sound recording. However, in his view the loading of MP3 files onto flash memory should be seen as a new recording technology, covered by the expression "recording of sound". Consequently, the devices referred to in the working document as using flash memory for the storage medium, should be regarded as recording apparatus of heading 85.20. Finally, he emphasized that in any event, the Explanatory Note to heading 85.20 would have to be amended in order to mention, alongside the recording of acoustic vibration, the recording based on the transcription of data onto a data medium.
3. Another delegate noted that some equipment classified in heading 85.20 did, in fact, not record sound, but recorded an electrical signal produced by another source (e.g., a radio). Therefore, there was, in his view, no distinction between that kind of apparatus and the MP3 players using a flash memory.
4. With respect to the device described in paragraph 6 (iv) of the working document (system consisting of a CD-ROM drive for reading MP3 format files) delegations agreed on a possible classification in heading 85.19.
5. The Chairman concluded that at the next session, the Committee should answer the question what "sound recording" meant in the context of heading 85.20 (i.e., would it cover the recording of "acoustic vibrations" only or should it be taken in a broader sense to also cover the transcription of data files onto flash memory). He noted that for the devices incorporating a radio receiver and an MP3 player, there seemed to be consensus to classify them in heading 85.27. However, pictures along with the descriptions given in the document might help delegates to better understand the various devices. Switzerland (being the proponent of a separate subheading for "MP3 players" in heading 85.19) was invited to submit original pictures to enable the Secretariat to prepare a new document for the next session.

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1	2
NC0507E1	Classification of a medicated bone graft substitute called "OSTEOSET®".

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. In view of the technical nature of this question, the Committee decided to send it to the Scientific Sub-Committee for its views on the nature of the "OSTEOSET®" product, i.e., whether it should be considered to be a medicament or bone reconstruction cement.
2. Due to lack of detailed information with respect to the product, the Secretariat was instructed to obtain more information from interested administrations as well as from the Internet so as to prepare a new working document in good time for the next session of the Sub-Committee.

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ANNEX IJ

OTHER

Working Document	Subject	Classification Opinions	E.N. Amendments	Nomenclature Amendments
1	2	3	4	5
NC0490E1	List of questions which might be examined at a future session.	<u>See Annex P.</u>	<u>See Annex P.</u>	<u>See Annex P.</u>

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. The Committee took note of the list of questions in the Annex to Doc. NC0490E1 and decided to add to the list the seven decisions taken at the Committee's 27th Session in respect of which reservations had been entered by Contracting Parties under Article 8 of the Convention.
2. This list, updated by the addition of the questions mentioned in paragraph 1 above and all the questions raised during the session for examination in greater detail at subsequent meetings, is reproduced in Annex P to this Report.

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