



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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NC0668E1
(+ Annex)

O. Eng.

Brussels, 16 April 2003.

DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL
ON THE INSERTION IN NATIONAL NOMENCLATURES OF SUBHEADINGS
TO FACILITATE THE COLLECTION AND COMPARISON OF DATA
ON THE INTERNATIONAL MOVEMENT OF SUBSTANCES CONTROLLED
BY VIRTUE OF AMENDMENTS TO THE MONTREAL PROTOCOL
ON SUBSTANCES THAT DEplete THE OZONE LAYER

(Item IV.1 on Agenda)

Reference documents :

45.405 (HSC/22)
NC0081E1 (HSC/23)
NC0090E2, Annex D/2 (HSC/23 – Report)
NR0312E1 (RSC/26)

NC0601E1 (HSC/30)
NC0655E2, Annexes D and K (HSC/30 – Report)
NS0073E1 (SSC/18)
NS0080E2, Annexes A/13 and C/8 (SSC/18 – Report)

I. BACKGROUND

1. At its 30th Session, on the basis of a proposal from UNEP, received on 3 July 2002, as well as the modified UNEP proposal distributed during the meeting (English only), the Committee examined the Draft Council Recommendation on the insertion of national subdivisions for certain mixtures containing ozone depleting substances (ODS).
2. Taking into account the fact that there already existed two Council Recommendations concerning ozone layer depleting substances, i.e., the Recommendation of June 1995 and the Recommendation of June 1999, which operated in parallel, the Committee agreed to go along with the Secretariat's suggestion and to work on a new Council Recommendation which would allow the earlier Recommendations to remain in force.
3. In this connection, one delegate stressed that the new Recommendation should include all substances already covered by the 1995 and 1999 Recommendations to ensure that the new Recommendation would not disturb the existing ones while enabling administrations

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which had not yet adopted any of these Recommendations to adopt a single new Recommendation.

4. He further stated that in accordance with the modified proposal from UNEP it would be preferable to include in the new Recommendation only products covered by the Montreal Protocol and to leave out national subdivisions for products covered by the Kyoto Protocol. In addition, he proposed that the matter be submitted to the Scientific Sub-Committee to examine whether the scope of the proposed national subdivisions for mixtures containing ODS was clear and whether the terminology used in the UNEP proposal was technically sound.
5. Another delegate supported the statement of the previous delegate and also proposed to ask the Scientific Sub-Committee to examine the technical aspects of the UNEP proposal and the classification of mixtures containing ODS, in particular. The Scientific Sub-Committee could also express its view as to whether introduction of all of the proposed national subdivisions would be desirable.
6. In view of the above, the Committee agreed to modify the Draft Recommendation by deleting the references to the Kyoto Protocol in the title and in the Preamble. It also agreed to delete national subdivisions for substitutes for ODS under subheadings 3813.00, 3814.00 and 3824.90, as well as references to these substitutes in the texts of other proposed national subdivisions for mixtures containing ODS.
7. The Committee further agreed to use the expression "halogenated only with" uniformly throughout all of the proposed national subdivisions, since UNEP had informed the Secretariat that it could accept such an approach. Two proposed national subdivisions under subheading 3813.00 were modified accordingly in the Draft Recommendation.
8. Finally, the Committee agreed to send this matter to the Scientific Sub-Committee and to ask them to examine the questions mentioned above.
9. The Scientific Sub-Committee, at its 18th Session, examined the Draft Council Recommendation on the insertion of national subdivisions for certain mixtures containing ODS set out in Annex K to Doc. NC0655E2, taking into account the Note and the revised proposal from UNEP reproduced in Doc. NS0078E1 and the questions forwarded by the HS Committee. The observations of the Scientific Sub-Committee are set out below.

II. OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE

10. There was consensus in the Sub-Committee to use the text "bromomethane (methyl bromide)" consistently in all recommended subdivisions under subheadings 2903.30, 3808.10 to 3808.90 and 3824.90 of the Draft Recommendation. The same description had been used in the past under subheading 2903.30 for the existing two Council Recommendations concerning ozone layer depleting substances.
11. One delegate questioned whether mixtures containing bromochloromethane were used as pesticides, whether they were marketed as such and, consequently, whether there would be any reason to recommend separate subdivisions for them under heading 38.08. He therefore proposed to place the subdivisions for products containing bromochloromethane within subheadings 3808.10 to 3808.90 in square brackets, pending the receipt of additional

information in this connection which might be provided by UNEP. The Sub-Committee agreed.

12. The Sub-Committee further agreed to recommend deletion of the term “(halons)” in the first subdivision under subheading 3813.00, since “halons” was a general term, synonymous with a much larger group of compounds than the three compounds listed in the subdivision.
13. There was agreement in the Sub-Committee that the scope of the second and third subdivisions under subheading 3813.00, as proposed in Annex K to Doc. NC0655E2, was vague. It went beyond the scope of the Montreal Protocol, since the Annexes to the Montreal Protocol included only halogenated hydrocarbons containing up to three carbon atoms. The texts of these two subdivisions were therefore proposed to be modified to read “containing methane, ethane or propane hydrobromofluorocarbons (HBFCs)” and “containing methane, ethane or propane hydrochlorofluorocarbons (HCFCs)”, respectively. Consequently, the same texts were proposed for the last two subdivisions under subheading 3824.90. For the sake of consistency, this principle of drafting was also used to modify the wording of the first two subdivisions under subheading 3814.00. In this connection, the Sub-Committee had no objection to retaining the proposed abbreviations “HBFCs”, “HCFCs” and “CFCs” in the texts, since they already appeared in the Protocol and had been requested by UNEP.
14. In view of the information from UNEP reproduced in paragraph 2 (iii) of Doc. NS0078E1 that no further information concerning the composition and application of solvent mixtures was available, the Sub-Committee could only refer to the information set out in Annex II to Doc. 42.405 (November 1998). On that basis, the Sub-Committee did not have sufficient information as to whether any composite organic solvents containing carbon tetrachloride or bromochloromethane were currently on the market nor whether the recommended subdivisions for them would be justified under subheading 3814.00.
15. The same conclusion was reached in the case of the first and the fourth subdivisions under subheading 3824.90 for mixtures containing carbon tetrachloride or bromochloromethane. The Sub-Committee therefore agreed to place the four subdivisions under subheading 3814.00 and 3824.90 dealing with carbon tetrachloride and bromochloromethane in square brackets.
16. Finally, subject to the modifications and comments summarised above, the Sub-Committee agreed to recommend the Draft Recommendation as set out in Annex C/8 to Doc. NS0080E2 for the consideration of the Harmonized System Committee.

III. SECRETARIAT COMMENTS

17. During the intersession, the Secretariat received comments from the **French** Customs Administration regarding the appropriateness of the expression “contenant des hydrobromofluorocarbons du méthane, de l'éthane ou du propane (HBFC)” used in the French version of subheadings 3813.00 and 3824.90 of Annex C/8 to Doc. NS0080E2. They have proposed to replace it by the expression “contenant des hydrobromofluorocarbures dérivés du méthane, de l'éthane ou du propane (HBFC)”. Accordingly, the same would apply to subheadings 3813.00, 3814.00 and 3824.90 in connection with abbreviations HCFCs and CFCs.

18. The corresponding English text in the Draft Recommendation currently reads “containing methane, ethane or propane hydrobromofluorocarbons (HBFCs)”. In the Secretariat’s view, if the French text were to be modified as proposed by the French Administration, the scope in the French text would be broader than the English text. If this proposal is accepted, in order to align the English on the French, the English text would need to be amended to read “containing hydrobromofluorocarbons (HBFCs) derived from methane, ethane or propane”.
19. The Secretariat feels that the term “derived from” appears to imply that the relevant subdivisions also cover halogenated hydrocarbons containing more than three carbon atoms. Taking account of the conclusion of the Scientific Sub-Committee to follow the scope of the Montreal Protocol in the proposed subdivisions, the Secretariat preferred to put these comments forward to the Committee to decide on the course of action with regard to the French proposal.
20. Furthermore, the French Administration is proposing to use the stem “-carbures” instead of “-carbones” in the names of various types of hydrocarbons.
21. The Secretariat admits that in Chapter 29 of the HS Nomenclature, the French text refers to “hydrocarbures” (emphasis added) in headings 29.01 to 29.04, in particular. On the other hand, the stem “-carbones” is used in the French text of the Montreal Protocol in chemical names, such as “hydrobromofluorocarbones” or “hydrochlorofluorocarbones”.
22. In the Draft Recommendation, as examined by the Scientific Sub-Committee, the French text refers to respective types of “-carbones”, following the Montreal Protocol. It is, of course, up to the Committee to decide, whether to follow the terminology of the Montreal Protocol or the HS terminology in the French text.
23. Acting on the Scientific Sub-Committee’s instructions, during the intersession, the Secretariat has contacted UNEP (the Ozone Secretariat) asking it to provide additional information as to whether :
 - (i) mixtures containing bromochloromethane are used as pesticides and are marketed as such;
 - (ii) any composite organic solvent containing carbon tetrachloride or bromochloromethane is currently on the market;
 - (iii) any mixture, which could be classifiable in subheading 3824.90, containing carbon tetrachloride or bromochloromethane is currently on the market.
24. The Secretariat has also asked UNEP to provide examples of such products, if known.
25. By the time of preparation of this document, UNEP had not been able to provide a summarised reply but only comments from individual members of the Expert Group on Customs Codes nominated by the Parties to the Montreal Protocol.
26. Members of the Expert Group did not know of any mixture containing bromochloromethane used as pesticides, or of composite organic solvents or other mixtures containing carbon tetrachloride or bromochloromethane.

27. One of them, however, pointed out that with regard to solvents there was no technical problem in producing and commercialising such mixtures. As carbon tetrachloride was an excellent solvent, and it was easily miscible with many other solvents which are not controlled under the Montreal Protocol. Therefore, it might be technically and economically feasible to produce solvent mixtures containing carbon tetrachloride which could be freely traded.
28. Another member of the Expert Group, in addition, proposed a second alternative. Rather than to delete national subdivisions for bromochloromethane in heading 38.08 from the Draft Recommendation, she found it better to combine national subdivisions for products containing methyl bromide with subdivisions for products containing bromochloromethane. Accordingly, in subheadings 3814.00 and 3824.90 she preferred to combine subdivisions for products containing carbon tetrachloride or bromochloromethane, e.g., with products containing 1,1,1-trichloroethane, rather than to omit them completely from the Draft Recommendation.
29. Under these circumstances, if real examples of mixtures referred to in paragraph 23 (i) to (iii) are not known, the Secretariat is of the opinion that the Draft Recommendation should not provide for separate subdivisions. Consequently, the question to be examined would be whether national subdivisions for these mixtures should be combined with subdivisions for other products controlled by virtue of the Montreal Protocol or they should be omitted from the Draft Recommendation. It is, of course, up to the Committee to decide on these questions.
30. On the basis of the observations of the Scientific Sub-Committee and taking into account the comments above, the Secretariat has prepared a Draft Recommendation which is set out in the Annex to this document. The subdivisions for products containing bromochloromethane in heading 38.08 and for products containing carbon tetrachloride or bromochloromethane in subheadings 3814.00 and 3824.90 have been placed in square brackets as recommended by the Scientific Sub-Committee. The text of the proposed subdivisions in subheadings 3813.00, 3814.00 and 3824.90 referring to abbreviations HBFCs, HCFCs and CFCs, as recommended by the Scientific Sub-Committee, and the corresponding alternative texts proposed by France have also been placed in square brackets. The stem “-carbones” and its alternative “-carbures” were also placed in square brackets.
31. In conclusion, the Secretariat would propose the following questions to be examined by the Committee :
- (i) whether to follow the HS terminology and to use the stem “-carbures” in the French names of hydrocarbons or to follow the terminology of the Montreal Protocol and to use the stem “-carbones”;
 - (ii) whether the texts of subdivisions in subheadings 3813.00, 3814.00 and 3824.90 referring to the abbreviations HBFCs, HCFCs and CFCs should be amended as proposed by the French Administration and, if so, whether it should be done in French only or in both versions;
 - (iii) whether separate subdivisions should be included in the Draft Recommendation for products containing bromochloromethane under heading 38.08 and for products containing carbon tetrachloride or bromochloromethane under subheadings 3814.00 and 3824.90. If not, should these subdivisions be omitted from the Draft Recommendation or should they be combined with other recommended subdivisions under the respective subheadings, e.g., under heading 38.08 for products containing

methyl bromide with subdivisions for products containing bromochloromethane and under subheadings 3814.00 and 3824.90 for products containing carbon tetrachloride or bromochloromethane with subdivisions for products containing 1,1,1-trichloroethane.

IV. CONCLUSION

32. Taking into account the observations of the Scientific Sub-Committee, the comments of the Expert Group, the proposal of the **French** Administration and the Secretariat's comments above, the Committee is invited to examine the Draft Council Recommendation as set out in the Annex to this document.

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