



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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NC0697E1
(+ Annex)

O. Eng.

Brussels, 11 April 2003.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE WITH REGARD TO
THE ROTTERDAM CONVENTION
(Item VIII.11 on Agenda)

Reference documents :

NC0590E2, paragraph 38 (HSC/29 – Report)
NC0634E1 (HSC/30)
NC0648E1 (HSC/30)

NC0655E2, Annexes H/20 and M/8 (HSC/30 – Report)
NS0080E3, Annexes A/17 and C/11 (SSC/18 – Report)

I. BACKGROUND

1. At its 30th Session, the Harmonized System Committee discussed a proposal by the **EC** and the Interim Secretariat for the Rotterdam Convention concerning possible amendments to the Nomenclature with regard to the Rotterdam Convention.
2. The **EC** Delegate reiterated the fact that the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade had been adopted at a Conference of Plenipotentiaries in Rotterdam on 10 September 1998. To date it had 73 signatories; 33 of them had already deposited their instruments of ratification. It would enter into force as soon as 50 instruments of ratification had been deposited. He informed the Committee that the **EC and its Member States** already applied the Rotterdam Convention procedure. As the aim of this Convention was to protect the environment and to control products for which trade was restricted, the serious environmental concerns of the international community served as a basis for the proposal to amend the HS Nomenclature.
3. He explained that the matter had been put forward by the Interim Secretariat for the Rotterdam Convention with the support of the **EC**. The concrete proposals by the Interim Secretariat for the Rotterdam Convention and by the **EC** had been reproduced in Annex I and in Annexes II and III to Doc. NC0634E1, respectively.

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4. Given the extremely technical nature of the issue, he suggested that the matter be submitted to the Scientific Sub-Committee for examination. He expressed the hope that a representative of the Interim Secretariat for the Rotterdam Convention, which was not able to attend this Committee's session, could participate and contribute to the technical discussions of the Scientific Sub-Committee.
5. He further expressed the view that by the time when the nomenclature amendments for 2007 would be submitted to the Council, the Rotterdam Convention would be in force, since at the beginning of November 2002 it already had 33 of necessary 50 instruments of ratification deposited and 9 other signatories had indicated they would ratify it within the next few weeks. On the other hand, there was no reference to the Rotterdam Convention itself in the proposed nomenclature amendments. The fact that in June 2004 the Rotterdam Convention would not yet be in force should therefore not create difficulties for the Council in accepting the Nomenclature amendments which would, in fact, reflect environmental concerns.
6. With regard to the Secretariat's comments in paragraph 29 of Doc. NC0634E1, a second delegate, pointed out that the Committee could apply the same approach as it had already applied in the past, e.g., with regard to the nomenclature amendments concerning ozone layer depleting substances. If the proposed nomenclature amendments could not be introduced in the 2007 Nomenclature, a new Council Recommendation regarding the Rotterdam Convention could be prepared to be adopted by the Council as an interim measure. He felt that the Committee could have a parallel Draft Council Recommendation available for such an eventuality.
7. The Director explained that there was no need to take a decision on that question at this meeting and the Committee could move to the new Council Recommendation at a later stage, if necessary. The Committee agreed with this suggestion.
8. In connection with the proposed nomenclature amendments set out in Annex IV to Doc. NC0634E1, the Delegate of the EC explained that the EC would :
 - (i) prefer to include dinoseb acetate and salts of 2,4,5 –trichlorophenoxyacetic acid in the nomenclature amendments despite the fact that they were not listed directly in Annex III of the Rotterdam Convention. According to the "Decision Guidance Document" which provided clarification as regards the scope of coverage of that Convention (see paragraph 3 of Doc. NC0648E1) these chemical substances were also subject to the PIC procedure;
 - (ii) prefer to use the word "containing" rather than "based on" in the proposed amendments to heading 38.08;
 - (iii) prefer to have three separate subheadings in headings 29.03 and 38.24 for polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) and polybrominated biphenyls (PBBs) and for mixtures and preparations containing them, respectively.
9. A second delegate agreed with the EC to include dinoseb acetate and salts of 2,4,5 – trichlorophenoxyacetic acid in the proposed Nomenclature amendments. Referring to Annex IV to Doc. NC0634E1, he raised questions as to whether :
 - (i) it would be necessary to include the "ISO" designations in the proposed amendments;

- (ii) it would not be possible to modify the proposed text of subheading 2903.51, since it could give the false impression that it referred to three different chemicals;
 - (iii) camphechlor (proposed subheading 2903.52), being a complex mixture and not just a mixture of isomers, would not be classifiable in heading 38.08;
 - (iv) PCBs, PCTs and PBBs, being neither separate chemically defined compounds nor simple mixtures of isomers, would fall in heading 29.03 and not in subheading 3824.90;
 - (v) the classification of pesticides at subheading level in heading 38.08 would be correct, since some of the substances proposed to be listed in subheadings for insecticides and fungicides were so-called "multipurpose pesticides" which could fall in subheading 3808.90.
10. He also pointed out that the subheading codes proposed by the **EC**, which had been deleted since 1996, could be reused if the proposed Nomenclature amendment would enter into force on 1 January 2007, since a period of 10 years would have already elapsed by that time.
11. Finally, the Committee agreed to submit the matter to the Scientific Sub-Committee for examination, asking it to express its views as regards the questions set out in paragraphs 65 and 66 of Doc. NC0634E1 and with regard to all of the comments on Annex IV to Doc. NC0634E1, expressed above.
12. The Scientific Sub-Committee, at its 18th Session, examined the wording of the amendments to the Nomenclature which had been proposed to take account of the Rotterdam Convention and the classification of the commodities concerned, considering the questions set out in paragraphs 65 and 66 of Doc. NC0634E1 and the comments of the HS Committee reproduced in Annex H/20 to Doc. NC0655E2. The observations of the Scientific Sub-Committee are set out below.

II. OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE

13. With regard to the chemical terminology used in the proposal, the Sub-Committee preferred to give priority to ISO terminology, an alternative chemical name for the same chemical being listed in brackets after the ISO name, if necessary. It further expressed a preference to keep the "(ISO)" designation after the ISO name, since it was important to clearly indicate the origin of the name. It was pointed out that the same approach had already been applied in the Nomenclature in the case of INN compounds, where the abbreviation "(INN)" was given after the INN name of a chemical.
14. The Sub-Committee recommended the deletion of the abbreviations "EDC" and "EDB" from subheadings 2903.15 and 2903.31, respectively, and the reference to "γ-HCH" from new subheading 2903.51. The reference to "mixed isomers" in new subheading 2903.51 did not appear to be necessary since, by virtue of Note 1 (b) to Chapter 29, mixed isomers were automatically covered.
15. One delegate indicated that camphechlor was a complex mixture of more than 100 chemicals and that it would therefore be excluded from Chapter 29 and be classified in heading 38.08. In the light of this information the Sub-Committee agreed that creation of a new subheading 2903.52 for camphechlor would not be appropriate.

16. There was general agreement in the Sub-Committee to combine, to the extent possible, the proposed new subheadings in the interest of simplification. This preference concerned mainly proposed subheadings 2903.53, 2920.11, 2924.12, 2930.50, 3808.11, 3808.21, 3808.91 and 3824.83.
17. Since polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) and polybrominated biphenyls (PBBs) were not separate chemically defined compounds, nor simple mixtures of isomers, they were excluded from Chapter 29. Creation of a new subheading for them in heading 29.03 would therefore not be appropriate.
18. Taking into account the "Decision Guidance Document" clarifying the scope of the Rotterdam Convention, the Sub-Committee felt that dinoseb acetate and dinoseb salts should also be included in the proposed amendments. Consequently, a separate subheading 2915.36 for dinoseb acetate could be created. Dinoseb and its salts were identified in heading 29.08. Due to the structure of this heading at subheading level, it would, however, be more appropriate to mention them specifically at two-dash subheading level under subheading 2908.9, rather than as a new subheading 2908.30. For consistency, subheading 3808.31 should be modified to read "Containing dinoseb (ISO), its salts or its esters".
19. Based on the same principle, the Sub-Committee agreed to recommend creation of a separate subheading for "2,4,5-T (ISO) (2,4,5-trichlorophenoxyacetic acid), its salts and esters". For this purpose, subheading 2918.91 was considered to be more appropriate than subheading 2918.40. The wording of subheading 3808.32 was modified accordingly.
20. There was consensus in the Sub-Committee that binapacryl was classifiable in heading 29.16 (subheading 2916.39) under the current Nomenclature. A new subheading 2916.36 would therefore be more appropriate for its separate identification.
21. As regards the various products of Chapters 32, 34 and 38, containing mercury compounds, the Sub-Committee put forward an alternative idea for consideration by the Harmonized System Committee. In order to reduce the number of new subheadings in these Chapters, separate headings could be created in each of these Chapters for goods containing mercury compounds. New Chapter Notes could establish that such separate headings would have priority over all other headings of the particular Chapter. In view of this suggestion, all proposed amendments regarding products containing mercury compounds in Chapters 32, 34 and 38 were placed in square brackets.
22. In this connection, reference was made to the **Canadian** proposal to regroup all products covered by the Montreal Protocol and the Rotterdam Convention under one heading in the Nomenclature. The **Canadian** proposal was distributed during the meeting as a "non-paper" and was briefly introduced during the discussion regarding the possible amendment of the structured nomenclature to heading 38.24. The Director saw some merit in the **Canadian** proposal but also noted a number of technical problems with regard to its presentation. The Sub-Committee therefore agreed not to discuss the **Canadian** proposal in depth and invited the **Canadian** Administration to redraft its proposal and to formally submit it for the consideration of the Review Sub-Committee at a future session.
23. Referring to paragraph 22 of Doc. NC0634E1, two delegates pointed out that Chapter 33 could also include certain products containing mercury compounds. Another delegate explained that from a practical point of view it would not be desirable to distinguish between inorganic and organic mercury compounds, since it would be difficult to set up a

dividing line between them (as mercury formed special types of bonds with carbon and other atoms). In connection with proposed new heading 28.51 for mercury compounds and with the proposed amendments to Note 1 (b) to Section VI and Note 2 to Chapter 28, one delegate noted that a consequential amendment to Note 6 to Chapter 29 would also be necessary.

24. In the proposed texts for heading 38.08, the Sub-Committee preferred to use the term "containing" rather than the expression "based on". Several delegates pointed out that even the presence of a particular chemical substance in the product as an impurity or in trace amounts would qualify the product to be classified in a relevant subheading. One delegate questioned whether such an approach was of interest to the Rotterdam Convention.
25. The representative of the Interim Secretariat for the Rotterdam Convention explained that the Convention itself did not state whether traces of controlled substances contained in some products were covered and it did not set up a minimum limit when a substance could be regarded as an impurity. The Convention, however, did not cover chemicals listed in the Annex when they were for personal use or for research purposes. He further stated that 38 of the necessary 50 instruments of ratification had been deposited to date and that it was expected that the Convention would enter into force in the second half of 2003. At that time, the above-mentioned issue could be addressed.
26. The Sub-Committee then examined the classification of pesticides at subheading level. It was agreed that products containing hexachlorobenzene should be classified in subheading 3808.20 as fungicides. Products containing pentachlorophenol or chlorobenzilate should fall in subheading 3808.90 and products containing oxirane in subheading 3808.40. The proposed new subheadings for heading 38.08 should be rearranged accordingly.
27. Furthermore, it was pointed out that to avoid difficulties in the identification of the different effects which individual pesticides, often multipurpose, might have, creation of a separate subheading under heading 38.08 for products subject to the Rotterdam Convention could be a solution. That subheading could be given priority at one-dash subheading level and the current subheading structure could be transferred to the two-dash subheading level in order to subdivide all "other" goods of heading 38.08.
28. With regard to proposed new subheadings 3824.81 to 3824.84, the Sub-Committee agreed that the reference to "not elsewhere specified or included" in the introductory text at one-dash subheading level was not necessary, since heading 38.24 was a residual heading and this expression was already included in the heading text.
29. Finally, the Sub-Committee expressed the view that the proposed headings/subheadings would be identifiable and technically distinguishable from the other goods falling in the same headings/subheadings.
30. Subject to the modifications and comments summarised above, the Sub-Committee agreed to recommend the possible amendments to the Nomenclature with regard to the Rotterdam Convention as set out in Annex C/11 to Doc. NS0080E2.

III. SECRETARIAT COMMENTS

31. On the basis of the texts recommended by the Scientific Sub-Committee, the Secretariat has prepared possible amendments to the Nomenclature with regard to the Rotterdam Convention, which are reproduced in the Annex to this document. In accordance with the observations of the Scientific Sub-Committee, the Secretariat has also included an amendment to Note 6 to Chapter 29 in the Annex. Reflecting the fact that organic mercury compounds would be covered by a separate heading in Chapter 28, the reference to mercury in the first sentence of the existing Note 6 to Chapter 29 had been deleted.
32. In comparison with the text examined by the Scientific Sub-Committee, the Secretariat has redrafted the presentation of the amendments in accordance with the current practice of the Committee.
33. In the original proposal, a new heading proposed for mercury compounds was presented as heading 28.51. Since heading 28.51 currently exists in the Nomenclature and is not subdivided at subheading level, the same heading number with a different scope should not be reused. In the Annex to this document, the Secretariat has therefore attributed code 28.52 to the new heading for mercury compounds and renumbered current heading 28.51 as 28.53. Consequential amendments to the texts of Note 1 (b) to Section VI and Note 2 to Chapter 28 have also been proposed.
34. With a view to reducing the number of possible new subheadings to be created for goods containing mercury compounds, the Scientific Sub-Committee put forward the following alternative option to the original proposal by the EC and the Interim Secretariat for the Rotterdam Convention. In Chapters 32, 33, 34 and 38, separate headings could be created for goods containing mercury compounds, which would have priority over all other headings of the particular Chapter. This priority could be established by new Chapter Notes.
35. The Committee is invited to consider this idea and to decide what future action should be taken in this respect. If there is any support to this approach, guidance vis-à-vis the possible structure of the new headings in the affected Chapters and the basis for subdivisions at subheading level should be considered by the Committee.
36. A similar approach at subheading level in heading 38.08 could avoid difficulties in the identification of the different effects which multipurpose pesticides might have. The Scientific Sub-Committee pointed out that creation of a separate subheading in heading 38.08 for products subject to the Rotterdam Convention could be a solution. Such a separate subheading could have priority at one-dash subheading level while the current subheading structure could be maintained at two-dash subheading level for products of heading 38.08, other than those subject to the Rotterdam Convention.
37. If the Committee is in favour of this proposal, there would be two basic options as to how to proceed technically with this amendment. The first option would be to have an explicit list of products subject to the Rotterdam Convention in the text of a new subheading itself. In that case, the subheading text would be long and quite complicated. As a second option, the text of a new subheading could refer to goods specified in a Subheading Note and a new Subheading Note could be created for this purpose in Chapter 38 that would specifically list products of heading 38.08 covered by the Rotterdam Convention.

38. In addition, taking into account the fact that the **Canadian** Administration was invited to redraft and to formally submit its proposal to regroup all products covered by the Montreal Protocol and the Rotterdam Convention under one heading in the Nomenclature for the consideration of the Review Sub-Committee at a future session, it appears that a substantially new approach is being envisaged by that administration as an alternative to the proposal recently examined by the Scientific Sub-Committee.
39. In the Secretariat's view, all approaches and options mentioned above should be examined by the Committee. At this point, the Secretariat believes that administrations and the Secretariat need further time to study the matter in greater detail. The Secretariat is of the opinion that, at this time, the inputs from the Scientific Sub-Committee mentioned above would merit discussion by the Committee from the general perspective.

IV. CONCLUSION

40. Taking into account the observations of the Scientific Sub-Committee and the Secretariat's comments above, the Committee is invited to examine the possible amendments to the Nomenclature with regard to the Rotterdam Convention, as set out in the Annex to this document.

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