



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
37th Session

NR0751E1b

O. Eng./Fr.

Brussels, 21 May 2008.

REPORT OF THE 37TH SESSION
OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE

1. The HS Review Sub-Committee held its 37th Session from 13 to 21 May 2008 at the headquarters of the World Customs Organization in Brussels. The meeting was chaired by Ms. R. MÄNTYMAA (Finland).
2. The following 44 WCO Members and one Customs and Economic Union were represented :

Members

ARGENTINA	FRANCE	ROMANIA
AUSTRALIA	GABON	SAUDI ARABIA
BANGLADESH	GHANA	SERBIA
BELGIUM	INDIA	SINGAPORE
BENIN	JAPAN	SPAIN
BRAZIL	JORDAN	SRI LANKA
CANADA	KAZAKHSTAN	SWITZERLAND
CHINA (People's Rep. of)	LIBYAN ARAB JAMAHIRIYA	THAILAND
COLOMBIA	MALAYSIA	TUNISIA
CONGO (Dem. Rep. of)	NETHERLANDS	TURKEY
CROATIA	NORWAY	UKRAINE
CZECH REPUBLIC	PARAGUAY	UNITED ARAB EMIRATES
DENMARK	PERU	UNITED STATES
EGYPT	PHILIPPINES	YEMEN
ETHIOPIA	POLAND	

Customs and Economic Union

EUROPEAN COMMUNITY (EC).

3. The following two international organizations were represented by observers :

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)
INTERNATIONAL CHAMBER OF COMMERCE (ICC).

4. The following Research Group of the University of Hamburg (Germany) was represented as an observer during the discussion of Agenda item III.A.15 :

RESEARCH GROUP FOR BIOLOGICAL ARMS CONTROL.

5. The list of participants is reproduced at Annex F to this Report.

I. ADOPTION OF THE AGENDA
(Doc. NR0723E1c)

6. The Chairperson indicated that the following non-papers had been distributed :

Agenda item	Country	Language
III.A.1	FAO	English
III.A.3	Egypt	English
	United States	English/French
III.A.4	Brazil	English/French
III.A.5	Japan	English
III.A.9	Japan	English
III.A.10	United States	English (info 1 and 2)
III.A.18	ICC	English/French
	United States	English
III.B.2	Canada	English/French

7. The Delegate of Japan requested that Agenda items III.B.2 and 3 be postponed, as her Administration considered that these questions should not be considered until the period for entering reservations in respect of the HSC's classification decisions had expired. Her Administration believed that the textiles-related issue was a particularly sensitive one, and one on which the Contracting Parties were strongly divided, especially with reference to the vote on the classification of "hockey pants" at the HSC's 41st Session. With this in mind, her Administration requested that the reservation procedure provided for in Article 8 of the Convention be adhered to and that the Sub-Committee wait until the classification decision had been approved by the Council. The Sub-Committee concluded that it would not delete these items from the Agenda, but would hold a preliminary discussion on them without taking any decision as the period set aside for the next HS review cycle was nearing an end (see Annexes D/2 and D/3 to the Report).

8. With regard to item III.A.18, the Japanese Administration had also sent the Secretariat a note requesting that this Agenda item be postponed. On the same Agenda item, the Delegate of the United States informed the Sub-Committee that industrialists in many countries (such as the United States, Japan, the EC, China, Taiwan) specializing in the manufacture of semi-conductors had a keen interest in this subject, and had prepared a preliminary draft text for this legal Note to Chapter 85. He added that this was simply a draft text drawn up by industrial associations which had not yet been approved by any national administration, but he was making it available to interested delegations as a potential starting-point for the discussions. In addition, the Representative of the ICC informed the

Sub-Committee that the ICC was currently working closely with the European Semiconductor Industry Association. He asked for a preliminary discussion on this item, on the basis of the non-paper which had been distributed (see Annex C/18 to the Report).

9. During the analysis of the Agenda, the Secretariat took note of the various delegations' requests regarding the scheduling of the discussions on items III.A.3, 4, 5, 13 and 18.
10. Finally, the Delegate of Canada drew the Secretariat's attention to the change in the dates of this session (see Agenda item I.2). As the duration of the meeting had been shortened, he asked the Secretariat to kindly inform Members of such changes as promptly as possible so that delegations could make the necessary arrangements with airlines and hotels, thus avoiding any inconvenience. The Secretariat took note of these concerns and indicated that in future it would make every effort to inform delegations in good time.
11. Following these deliberations, the Review Sub-Committee adopted the Agenda which is reproduced at Annex A to this Report. This Annex also serves as the Table of Contents.

II. QUESTIONS EXAMINED BY THE REVIEW SUB-COMMITTEE

12. The comments made during the discussions and the conclusions reached by the Sub-Committee on the various Agenda items are set out at Annexes B to E to this Report.

III. OTHER

SECRETARIAT STAFF CHANGES

13. Mr. Craig CLARK (United States) introduced himself as the new Deputy Director, Tariff and Trade Affairs, since January 2008.

R. MÄNTYMAA
Chairperson

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AGENDA FOR THE 37TH SESSION
OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE

(From 13 to 21 May 2008)

<u>Agenda Item Number</u>	<u>Subject</u>	<u>Documents</u>
I. <u>ADOPTION OF THE AGENDA</u>		
1. Draft Agenda		A
2. Draft Timetable		
II. <u>GENERAL QUESTIONS</u>		
1. Decisions taken by the Harmonized System Committee at its 41 st Session affecting the work of the Review Sub-Committee		B/1
2. Possible deletion of headings/subheadings with a small volume of trade		B/2
3. Other		
III. <u>TECHNICAL QUESTIONS</u>		
A. <u>Further studies</u>		
1. Possible amendments of the Nomenclature (Proposal by FAO)		C/1, E/3
2. Possible amendment of heading 17.01		C/2, E/4
3. Possible amendment of heading 24.03		C/3, E/10
4. Possible amendment to the Nomenclature to provide for bio-diesel		C/4, E/6
5. Possible amendment of Note 2 to Chapter 30 and of heading 30.02		C/5, E/5
6. Possible new Subheading Note 1 to Chapter 41		C/6, E/1
7. Possible amendment of the Nomenclature with respect to printer cartridges		C/7, E/2
8. Possible new Note 6 to Chapter 95		C/8, E/7
9. Possible amendment of Note 3 to Chapter 4		C/9, E/9

<u>Agenda Item Number</u>	<u>Subject</u>	<u>Documents</u>
10.	Possible new heading 96.19 (Proposal by the US)	C/10, E/11
11.	Possible amendments to headings 20.08 and 20.09 (Proposal by the US)	C/11, E/8
12.	Possible amendment of Note 1 to Chapter 38	C/12, E/15
13.	Possible amendment of heading 85.17	C/13, E/12
14.	Possible amendment of subheading 9504.30 (Proposal by Japan)	C/14
15.	Possible amendments of the Nomenclature (Proposal by the Research Group for biological Arms Control)	C/15
16.	Possible amendment of heading 06.03 (Proposal by China)	C/16, E/14
17.	Possible amendment of heading 84.79 (Proposal by China)	C/17, E/13
18.	Possible amendment of Note 8 (b) to Chapter 85 (Proposal by Japan)	C/18
B.	<u>New questions</u>	
1.	Use of singular and plural forms of the term "seed" in the Nomenclature	D/1, E/16
2.	Possible amendment of legal texts and Explanatory Notes to Chapter 95 (Proposal by EC)	D/2, E/17
3.	Possible amendment of Note 3 (d) to Chapter 38	D/3, E/18

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ANNEX B

GENERAL QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NR0725E1a	Decisions taken by the Harmonized System Committee at its 41 st Session affecting the work of the Review Sub-Committee.			

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Chairperson briefly summarized the decisions taken by the Harmonized System Committee at its 41st Session, as well as the outstanding questions and other issues affecting the work of the Review Sub-Committee.
2. The Delegate of Japan invited the Sub-Committee to consider the possibility of a Council Recommendation concerning the FAO proposal (paragraph 6 of the working document), given the many concerns expressed by Members of Organizations.
3. The Delegate of Japan also expressed her doubts about the validity of the procedure utilized concerning the proposal by the Research Group for Biological Arms Control (paragraph 9 of the working document).
4. Certain other delegates (US, Mexico), however, were of the view that the submission of a Council Recommendation, concerning the FAO proposal, should be decided, in any case, by the Harmonized System Committee and not by the Review Sub-Committee.
5. The Delegate of Mexico further explained that, in his opinion, given the importance of the subheadings contained in the document concerning the FAO proposal, the proposed modifications should be accomplished, if possible, in the current review cycle for the HS/2012.
6. On the other hand, several delegates shared the concerns expressed by the Delegate of Japan about the proposal by the Research Group for Biological Arms Control given that its origin is a private organization.
7. The Chairperson invited interested administrations to express their concerns and their technical remarks to the above referred subjects during the discussions of the Items III.A.1 and III.A.15 of the Agenda, respectively.
8. The Sub-Committee concurred with this proposal and took note of the decisions taken by the Committee at its 41st Session.

* * *

1	2
NR0726E1a	Possible deletion of headings/subheadings with a small volume of trade.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee considered the HS headings and sub-headings which were candidates for possible deletion, set forth in Lists I and II of Annex II to Doc. NR0726E1a. The Sub-Committee agreed by consensus that the headings and sub-headings which had entries in the "Justification for Retention" column would be removed from the lists and thereby retained in the HS. That group of retentions included two sub-headings (2912.50 and 8463.20) for which the Swiss Administration had requested retention, and the Sub-Committee also agreed to the Swiss request for retention of sub-headings 9114.10 and 9114.40.
2. The Delegate of Norway noted that the trade data in Annex I of the working document suggested that imports for sub-heading 7419.10 had increased well above the USD 50 million thresholds. The Secretariat noted that the near doubling of trade during the last of the four reported years had appeared to be an error of estimation procedure, but after examining the "raw" (unadjusted) data during the Sub-Committee Session, the Secretariat informed the Sub-Committee that the actual reported trade of USD 53 million for 2007 implied that the threshold likely was reached, and the Sub-Committee agreed that sub-heading 7419.10 should be retained in the HS.
3. The Sub-Committee agreed to retain headings 12.03 and 71.09 for technical reasons. During the Sub-Committee's discussion of the FAO proposal for new HS subdivisions under sub-headings 0909.10, 0909.40 and 0909.50 (see Annex C/1 to this Report), the Sub-Committee agreed to defer final decision on the proposed breakouts until further information could be obtained which would indicate whether actual trade existed in each of the possible new subheadings.
4. The US Delegate indicated that during the intersession before the next (38th) Session, his administration will submit justifications for retention of subheadings 2804.80 and 2844.30 on grounds of environmental concerns. The Delegate of China indicated that his administration would be submitting a justification for retention of headings 65.01 and 65.02. The Delegate of Brazil noted his administration's interest in retention of sub-heading 0801.21, and the Chairman urged the Brazilian Administration to submit a written justification before the next Session of the Sub-Committee.
5. The US Delegate noted that after removing the retained headings and sub-headings from Annexes I and II, it was necessary to examine the remaining candidates for deletion with a view towards deciding which ones, as the result of changes in the deletion list, posed technical problems precluding their deletion, and for the remaining candidates for deletion, the exact destination for each in the Nomenclature. His administration gave the Secretariat written information regarding possible disposition of certain subheadings on the deletion list.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

6. The Secretariat thanked the US for its work and explained that the working document for the next (38th) Session would contain an up-to-date list of headings and sub-headings to be deleted, legal changes for the Recommendation to effect the removal of those provisions, a 2007 – 2012 correlation table, and a discussion of technical issues considered by the Secretariat during the drafting of the Recommendation text.

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ANNEX C

TECHNICAL QUESTIONS

FURTHER STUDIES

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NR0727E1a NR0748E1a	Possible amendments of the Nomenclature (Proposal by FAO)			<u>See Annex E/3.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. At the outset of the discussion of this Agenda item, the Delegate of Japan expressed her administration's concerns with regard to the important scale of the amendments proposed by the FAO, which were likely to present problems with their implementation by the Customs and other trade-related agencies. She suggested that such amendments be recommended to the Contracting Parties by means of a Council Recommendation rather than as part of the Article 16 procedure. In her opinion, this alternative could be studied by the Secretariat during the intersession and presented to the next session of the HS Committee.
2. Other delegates, however, believed that the FAO proposal contained modifications that were in the interest of many countries and thus needed to be studied further within the current review cycle. The volume of trade in several products for which separate provisions were proposed had increased remarkably over the past several years. Certain commodities were already identified separately in many national tariffs. These reasons, in addition to those advanced by the FAO, warranted the necessity of continuing the examination of the proposal. It was felt that the important volume of amendments should not, *per se*, be regarded as sufficient justification to reject the proposal. At the same time, there was nothing to preclude the HS Committee from studying a Draft Recommendation in parallel with the examination of the FAO proposal by the Sub-Committee.
3. Following a brief discussion, it was agreed that the Sub-Committee should pursue the examination of the FAO proposal, within the current review cycle. Administrations that may wish to initiate a discussion on a possible Recommendation in the HS Committee were invited to submit their respective proposals to the Secretariat.
4. Having discussed at length the proposed amendments, the Sub-Committee agreed on numerous corrections of the text presented in the Annex to the working document NR0727E1a. It also recognised that the issues reported below would require further examination and placed the respective parts of the proposal in square brackets.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

Definition of the terms "bovine animals", "cattle" and "buffalo"

5. It was felt that the scope of the new term "cattle" proposed by the FAO would need to be defined in the legal text to ensure its uniform interpretation. In addition, the Delegate of Brazil suggested that the terms "bovine animals" and "buffalo" used in the current text of the Nomenclature be defined in a new legal Note to Chapter 1. Some delegates supported the idea of creating a new legal Note while others were in favour of describing the products in the texts of the respective headings and subheadings instead.

Subheading 0102.90

6. It was proposed that the creation of a separate two-dash subheading for "pure-bred breeding animals" under subheading 0102.90 should be considered.

Heading 02.09

7. Given that subheading 0209.10 would have the same scope as heading 02.09 itself, concerns were expressed as to the scope of the residual subheading 0209.90, which might be virtually empty. The FAO Observer undertook to provide clarification in this regard.

Definition of the term "freshwater fish"

8. With a view to avoiding any confusion between Salmonidae and freshwater fish, it was proposed to define the scope of subheadings providing for the latter category of fish in a new legal Note to Chapter 3. Alternatively, it was suggested that references to "freshwater fish, other than Salmonidae" be retained as they appeared in the working document, in which case no legal Note would be required.

New subheading 0301.20

9. Noting that there was nothing inherent in the characteristics of the fish for culture that would allow distinguishing it from regular fish, some delegates were opposed to the idea of having separate provisions for fish for culture. The FAO was requested to provide information with regard to the objective criteria on which such a distinction could be based.

Scope of the terms "pelagic fish" and "gadiformes"

10. Several delegates were concerned with respect to the introduction of the terms "pelagic fish" and "gadiformes" in the legal text since it would be difficult for the HS users to distinguish between these two groups of fish and other fish varieties in the absence of an internationally recognised definition of these terms. The FAO was requested to clarify how the proposed distinction was to be administered and what were the objective characteristics of the two types of fish that would be identifiable at the moment of Customs clearance.

New subheading 0305.55

11. One delegate stated that fish maws (bladders) belonged to heading 05.11. Moreover, she wondered whether the creation of a subheading for parts of fish would be consistent with the construction of the structured nomenclature of the five-digit subheading 0305.5, where the distinction was based on species of fish.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

12. The FAO Observer responded that the creation of a separate one-dash subheading for edible parts of fish under heading 03.05 could be considered as an alternative solution.

The insertion of the term "smoked" in headings 03.06, 03.07 and 03.08

13. The Sub-Committee took note of the fact that smoked products of these Chapters did exist. The FAO Observer reiterated that the aim of the proposal was to ascertain that the processes authorised for fish in Chapter 3 also be permitted for products of this Chapter other than fish. She indicated that the FAO position on this matter was flexible.

14. Taking note of the fact that the proposed insertion of the term "smoked" would only result in transfer of a limited number of products from Chapter 16 to Chapter 3, namely, crustaceans, molluscs and aquatic invertebrates that have only been smoked but not further prepared, the Sub-Committee, however, decided to give further consideration to the scope of the transfer of products.

Separate subheading for shrimps and prawns from aquaculture

15. Several delegates reiterated their reservations with regard to the insertion of separate provisions for fish and other products obtained from aquaculture mainly because of the trade facilitation concerns and the problems related to the lack of objective criteria on the basis of which Customs could administer the distinction between products from capture fisheries and aquaculture.

16. The Delegate of Brazil contended that aquaculture was a fast growing industry whose produce was a major item in terms of the volume of international trade deserving special treatment within the HS. He stressed that this was of particular interest for many developing countries. He undertook to provide information with regard to the methods of distinguishing between shrimps and prawns from aquaculture and those from capture fisheries.

Subheading 0401.30

17. The Sub-Committee agreed that two options would need to be further discussed : creation of a new separate one-dash subheading 0401.40 for cream or further subdividing current subheading 0401.30 to provide separately for cream, or milk, or both of them. It was felt that, since none of the two commodities were defined in the HS, the identification of milk and cream was likely to present problems.

New subheadings 0402.3 to 0402.31

18. It was agreed that further consideration should be given to the terminology to be used in one-dash subheading 0402.3, viz., whether milk should be referred to as "homogenised", "partially dehydrated" or "evaporated".

Heading 04.07 and new subheading 0511.20

19. The FAO was requested to provide clarification as to whether the volume of international trade in fertilized eggs and embryos justified the proposed introduction of separate subheadings for these products. It was also agreed to consider whether the

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

expression "for incubation" should be used in the text of the proposed new subheading 0407.10.

New subheading 0713.34

20. Doubts were expressed as to the taxonomic name of bambara beans, i. e., whether they should be referred to as *Voandzeia subterranea* or as *Vigna subterranea*. The Secretariat was instructed to inform the Sub-Committee of the correct scientific name.

Subheading 0801.1

21. Several delegates pointed out that there was a possible overlap between the proposed new subheadings 0801.12 and 0801.13.
22. The Delegate of Brazil called the Sub-Committee's attention to the fact that coconuts had two shells – an external fibrous outer shell and an inner shell. Moreover, when harvested young, coconut fruit consisted of a soft pulp having no shell. He was thus concerned about a possible lack of uniformity in the interpretation of the scope of the proposed new subdivisions for coconut. He undertook to study the matter further and submit an alternative proposal.

Heading 08.03

23. It was felt that the interpretation of the term "plantains" may lack uniformity as it did not have any specific meaning or an equivalent in certain languages. In some countries, this term was used in reference to cooking bananas, that is, bananas eaten after cooking. It was thus suggested that the term "plantains" be replaced with the expression "bananas eaten after cooking". It was also felt that the taxonomic name might be used in the text of subheading 0803.10 to avoid any confusion with regular bananas. The FAO was requested to provide information as to the scope of the proposed new subheading for plantains as well as the taxonomic name of the product.

Subheading 0809.20

24. With regard to the French version of the text of the proposed new subheading 0809.21, one delegate pointed out that sour cherries were typically referred to as "cerises acides" and suggested that this expression be used in the subheading text instead of "griottes", the latter being a region-specific name.

Chapter 9

25. The Sub-Committee agreed that, for the sake of consistency with the current provisions of Chapter 9, it would be desirable to replace the terms "raw" and "processed" with "neither crushed nor ground" and "crushed or ground", respectively.
26. The Secretariat was instructed to verify whether these subdivisions would be relevant for each of the products concerned.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

Scope of the term "seed" in the Nomenclature

27. The EC Delegate stated that there was a need to define the scope of the term "seed" in the Nomenclature by means of a legal Note to avoid any ambiguity in interpreting this term.
28. The Sub-Committee agreed that this matter should be handled as a separate Agenda item, subject to receiving proposals from administrations. The administrations were also invited to identify which HS provisions presented problems in terms of making a distinction between seed grade and other grades of the same product.

Subheading 1001.10

29. The FAO was requested to provide information with regard to the volume of trade in durum wheat seed.

New subheadings 1214.20 to 1214.70

30. Several delegates voiced concerns with regard to the proposed separate subheadings for different forage products emphasising the fact that Customs might have difficulties identifying each individual product and therefore administering the proposed new structured nomenclature of heading 12.14. The FAO was requested to provide information as to how the forage products were supposed to be identified, as well as the volume of trade statistics for these products.

Heading 15.02

31. All delegates who spoke were against the introduction of separate subheadings for fats obtained from specific animals due to the fact that the verification of the origin of animal fats might complicate the Customs clearance of these products. The FAO Observer undertook to inform the Sub-Committee as to whether this amendment could be withdrawn.

Heading 16.04

32. Some delegates were in favour of the status quo submitting that none of the suggested options was acceptable : providing for fish fillets at the one-dash level would result in renumbering of many subheadings in heading 16.04, while insertion of a separate sub-heading for this product at the two-dash level under the current subheading 1604.1 would be inconsistent with the structured nomenclature of the latter as the distinction between individual subheadings in it was made on the basis of species of fish rather than forms of fish. It was agreed that further examination of possible options was necessary.
33. The Sub-Committee concluded the discussion by agreeing to continue the examination of the FAO proposal at its next session.
34. The text of the proposal is reproduced in Annex E/3 to this Report.

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1	2	5
NR0728E1a NR0749E1a	Possible amendment of heading 17.01.	<u>See Annex E/4.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Delegate of Colombia informed the Sub-Committee that the sample that had been analysed by the laboratory originated from the Philippines and not from Thailand as it was indicated by mistake in the document submitted by her administration.
2. Taking into account the fact that the sucrose content reported by laboratories was below 93°, the Sub-Committee agreed that the upper limit for the product concerned to be indicated in the new Subheading Note 2 should be "less than 93°".
3. One delegate voiced his administration's concerns with regard to the last sentence of the Subheading Note, which required that the product must contain microcrystals not visible to the naked eye. He contended that it might be difficult for the Customs to check this characteristic at the border. He recalled recent discussions in the HS Committee on the issue of crystals and crystallisation, which had turned out to be a fairly complex issue. He thus suggested that the last sentence in the Subheading Note be deleted in order not to complicate Customs clearance of the sugar cane in question.
4. Another delegate, however, explained that what had to be ascertained for the purposes of the product classification were the absence of regular crystals, visible to the naked eye, rather than the presence of microcrystals. This, in his view, was a relatively easy task for Customs to administer.
5. After a brief discussion, it was agreed to retain the last sentence of the new Subheading Note.
6. The texts finalised by the Sub-Committee are reproduced in Annex E/4 to this Report.

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1	2	5
NR0729E1a	Possible amendment of heading 24.03.	<u>See Annex E/10.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. fr.)

1. Following presentation of the document by the Chairperson, the Delegate of Egypt started the discussion by indicating her administration's concerns on the matter. She stressed that it was necessary to determine the specific characteristics of water pipe tobacco and those of other types of tobacco. She explained that the main characteristics of water pipe tobacco are physical elements and components which are not found in other types of tobacco. In order for tobacco to be considered as water pipe tobacco, molasses and glycerin must be added to keep the tobacco moist. She also indicated that glycerin, when burnt became toxic (chlorite), but that it evaporated readily and dissolved in water thus considerably reducing health risks. Finally, she stated that other components may be added such as fruit flavourings and other additives but this varied according to the manufacturer. In conclusion, the Egyptian Administration was of the view that the Sub-Committee should provide certain criteria and recommendations to allow a distinction to be made between water pipe tobacco as such and other types of tobacco.
2. The US Delegate stated that his administration had studied the text proposed by the Secretariat in the Annex to the working document. He felt that the text was too detailed and that this information could be provided in an Explanatory Note if required. He therefore presented a non-paper to the Sub-Committee containing a shorter and simpler proposal for the text of the Note.
3. Since Egypt had also provided a non-paper concerning the same draft text in which only "Meassel" water pipe tobacco was covered, and since several delegates were in agreement that a shorter text was needed, the Sub-Committee decided to use the United States proposal as the basis for discussion.
4. The Delegate of Brazil noted that the United States proposal contained certain restrictions since it provided that all types of tobacco should contain glycerin whereas the Secretariat had shown that certain types of water pipe tobacco did not contain glycerin. The EC Delegate asked whether the other varieties of water pipe tobacco without molasses (such as Tumbak and Ajami) also contain glycerin. The Delegate of Canada was of the opinion that the expression "whether or not containing" would cover the other varieties of water pipe tobacco.
5. In response to these concerns, the Secretariat explained that all types of water pipe tobacco must contain glycerin in order to keep the product moist.
6. Some delegates suggested that references to oils, aromatic extracts and fruit be included in the Note to avoid ambiguity, to clearly indicate which products are permitted in water pipe tobacco and to ensure uniform interpretation of the legal text.
7. Following these proposals the Sub-Committee reached a consensus on the first sentence of the text at issue and on the possibility of creating an Explanatory Note containing all the details on the composition, traditional names of the pipes and the different varieties of water pipe tobacco.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

8. However, there were diverging opinions on the second sentence of the proposal. The Delegate of Egypt felt that the second sentence was not necessary since the Note should only cover "Meassel" type tobacco. This view was supported by the Delegate of Jordan, who suggested adding the term "Meassel" in the text of the Note, and by the Delegate of Brazil who felt that the expression "whether or not containing" in the first sentence was sufficient to clarify the scope of the Note and that the other tobacco-free products would be classified in subheading 2403.99.
9. Other delegates such as the delegates of Australia, the EC, the United States and Japan were in favour of keeping the second sentence as they felt it was necessary in order to fully understand the Note, to indicate that this Note covered only products containing tobacco and that tobacco substitutes, molasses and other mixtures not containing tobacco were excluded. If the second sentence was deleted, there would be a problem as regards the classification of these products (in subheading 2403.91 or in subheading 2403.99).
10. The delegates of Canada, Norway and Switzerland supported this view and suggested sending the question to the HSC since there was some uncertainty regarding the expression "tobacco substitutes in any proportion" in the text of current sub-heading 2403.10.
11. On the basis of the reasons put forward by different delegations and given the lack of consensus regarding the possible deletion of the second sentence in the Note, the Sub-Committee decided to place that sentence in square brackets and to submit the matter to the Harmonized System Committee. Following certain linguistic changes suggested by different delegations, the text would read as follows :
 - "1.- For the purposes of subheading 2403.11, the expression "water pipe tobacco" means tobacco intended for smoking in a water pipe and which consists of a mixture of tobacco and glycerin, whether or not containing aromatic oils and extracts, molasses or sugar, whether or not flavoured with fruit. [Tobacco-free products made from aromatic herbs and intended for smoking in a water pipe are excluded from the subheading.]"
12. The HSC should decide whether to keep or delete the second sentence. In addition, the Sub-Committee requests clarification regarding the expression "tobacco substitutes in any proportion" in the text of current sub-heading 2403.10.
13. Finally, the Secretariat was instructed to prepare a new working document for the next session which would contain the proposal for the subheading Explanatory Note.
14. The text amended by the Sub-Committee is reproduced in Annex E/10 to the Report.

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1	2	5
NR0730E1a	Possible amendment of the Nomenclature to provide for bio-diesel.	<u>See Annex E/6.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. After the introduction of the working document by the Chairperson, the Delegate of Japan took the floor to indicate that, in order to avoid a possible end-use criterion, her administration was in favour of removing the term "fuel" from the description of bio-diesel. She also indicated that, in her opinion, the subdivision of subheading 2710.20 proposed in the bilingual annex was not necessary.
2. Supporting the previous speaker, the Delegate of Brazil proposed an alternative description for biodiesel which had previously been distributed among the participants in a "non-paper" document. After giving a short historical summary on the question, he explained that, since the term "bio-diesel" had different connotations depending on the context, it would be more appropriate to use the term "ester bio-diesel" to designate the family of products under consideration. He further proposed to clarify the description of "ester biodiesel" by inserting the text "ester bio-diesel remains classified in heading 38.23 whether or not used as fuel".
3. He also affirmed that it was very important to create a specific subheading for the classification of the products under consideration for version 2012 of the Harmonized System and, accordingly, it would be necessary to provide, as soon as possible, a clear and modern description for the term "biodiesel", useful in the future for all the stakeholders involved in the international trade arena.
4. The Delegate of Sri Lanka took the floor to remind the Committee that Chapter 27 covered mineral oils. He further expressed his preference for the classification of all the biodiesel products in Chapter 38 and for the removal of the term "fuel" from the proposal presented in the bilingual annex by the Secretariat.
5. However, the US Delegate, while supporting the deletion of the term "fuel" from the description, explained that the word "bio-diesel" was derived from "diesel" which was, basically, a fuel, even if it was used for heating or for other purposes. In this connection, he remarked that, in order to avoid transfers of products from other parts of the Nomenclature, it would be necessary to clarify that the scope of the parts under consideration covered exclusively "biodiesel" and not simple mixtures of fatty acids, already included by other headings of the Nomenclature (heading 38.23 or Chapter 29 for pure chemical products). He expressed concerns that without specifying standards, e.g., an ASDM standard, there will be too many goods classified as bio-diesel.
6. He finally expressed his preference for the classification of bio diesel in a new heading 38.26 (Option 2 of the bilingual annex). He further explained that preference by saying that Chapter 38 covered a large number of chemical products (including fatty acids of heading 38.23), and therefore, the proposed classification in heading 38.26 would be the result of a "chemical progression" in Chapter 38.
7. The EC delegate pointed out that their chemical experts considered that the description of the term "biodiesel" should be replaced in the French version by the name : "esters alkylés

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

d'acides gras mono-carboxiliques". He further clarified that the proposed modification would not affect the text of the English version. No delegate spoke against that suggestion.

8. Furthermore, several delegates (EC, Switzerland) affirmed that, in their opinion, the description for biodiesel should also include "new generation" products (e.g., from wood, from biological materials, from waste materials) as well as new production methods of bio diesel (e.g., hydrogenation).
9. The Chairperson felt that the insertion of those new generation products could go beyond the scope of the "mono-alkyl esters of long fatty acids" included in the proposal and asked how the Sub-Committee should handle this new request posed by the EC and Switzerland.
10. After a further exchange of views, it was decided that, since these new generation products did not have a defined chemical composition yet, it would be advisable to continue the examination of a possible amendment of the Nomenclature to provide for bio diesel based, exclusively, on "mono-alkyl esters of long chain fatty acids".
11. The Delegate of Canada expressed his administration's concerns regarding the term "biodiesel" which, in his opinion, would refer to different families of products depending on the country and, therefore, it should be excluded from the text of the proposal. He further proposed a new approach for the classification of these products based on the introduction of a two-dash subdivision for the new heading 38.26.
12. In this connection, the Chairperson informed the Sub-Committee that concerning the description of biodiesel, the aim of the proposal presented by the Secretariat was simply to clarify the concept of the term "biodiesel" only for the purposes of the parts of the Nomenclature under consideration and not to provide a general definition for bio diesel.
13. Concerning the creation of the new subheading 2710.20 for the classification of oils containing biodiesel, the Sub-Committee unanimously agreed that the proposed new two-dash subdivision for that subheading was not necessary and should be deleted.
14. With regard to the term "fuel", the Committee agreed, by consensus, that it should be deleted from the proposal presented in the Annex. Moreover, following the suggestion of the Delegate of Japan, the Sub-Committee also agreed to insert in square brackets the alternative text : "as a fuel" after "[of a kind of]" with the aim of providing a more accurate description for the possible functions of the products at issue.
15. Concerning the two possible options for the classification of bio diesel in Chapter 38, despite the fact that some delegations (China, Japan, Brazil, Malaysia) had previously expressed their preference for Option 1, it was unanimously agreed to continue the examination of the classification of bio-diesel on the basis only of Option 2, which provided for the creation of a new heading 38.26 for the classification of the product under consideration.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

16. In addition, the Delegate of Brazil, while accepting the deletion of Option 1 from the bilingual annex, suggested the insertion, in square brackets, of the alternative proposal for Chapter 38 presented in the "non-paper" document provided by his administration. No delegate spoke against that suggestion.
17. Finally, it was decided to keep the brackets in the text "or from waste materials of biological origin". In this context, the Delegate of Brazil remarked that these "waste materials", would be covered by the scope of the description proposed for bio-diesel only if those products were of lipidic nature.
18. In this connection, the Chairperson agreed to invite all administrations to consult on the matter with technical experts and to submit their comments to the Secretariat in the intersession.
19. The Sub-Committee finally agreed that, the texts relating to the description of biodiesel included in the proposed new subheading Note 5 to Chapter 27 and the new Note 7 to Chapter 38, placed in square brackets, will be revisited at its next session.
20. The texts, placed in square brackets, are set out in Annex E/6 to this report.

* * *

1	2	3
NR0731E1a	Possible amendment of Note 2 to Chapter 30 and of heading 30.02.	<u>See Annex E/5.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. Before opening the discussion, the Secretariat stated that the expression "modification or" should be inserted before the word "obtained" in the proposed subheading text to align it to the draft text of heading 30.02.
2. The Delegate of Japan pointed out that the exclusion of heading 35.07 in the draft text of Note 2 to Chapter 30 might lead to a transfer of products from Chapter 30 to Chapter 35. Therefore, she stated that exclusion should be deleted from the draft text of Note 2 to Chapter 30.
3. In addition, she mentioned that her administration agreed with paragraph 9 of Doc. NR0731E1a and was of the view that if the list of examples in the latter part of the draft Note was not an exhaustive list, these examples could be removed from the legal text and placed in the Explanatory Notes as a normal practice.
4. Several delegates agreed with Japan concerning the elimination of the words "or 35.07" in the draft text of Note 2 to Chapter 30.
5. The Delegate of Switzerland briefly summarized the history of this item, which he stated had been proposed by his administration at the 34th Session of the Sub-Committee. He stated that the Note had already been reviewed by the Sub-Committee and the Scientific Sub-Committee at their previous sessions, and they had decided to retain the list of examples in the draft text. He concluded that the list of examples in the draft text of Note 2 to Chapter 30 should be retained.
6. The Delegate of Canada supported Switzerland in retaining the list of examples in the draft text of Note 2 to Chapter 30.
7. The US Delegate suggested deleting the comma before the first square brackets, since with the comma the text meant that all peptides and proteins would be directly involved in the regulation of immunological processes. He added that if this suggestion were accepted, the text in the last square brackets could be removed.
8. Furthermore, he indicated that the newly proposed text of subheading 3002.10 was not consistent with the draft heading text and should be aligned, and that the draft subheading text appeared more correct than the draft heading text.
9. The Chairperson drew the Sub-Committee's attention to the fact that the draft text of heading 30.02 was agreed to by the Sub-Committee at its previous session. She continued saying that it was appropriate to align the draft subheading text to the draft text of heading 30.02. The Sub-Committee did not have any objections to her suggestion.
10. When the Chairperson asked the Sub-Committee as to whether the list of examples should be retained in the draft text of Note 2 to Chapter 30, the Sub-Committee decided to retain the list of examples in the draft text.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

11. The EC Delegate agreed with the US proposal regarding the elimination of the comma before the first square brackets. However, he suggested placing the word "certain" before "tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF)" to further clarify that these products do not always relate to immunological processes.
12. The US Delegate agreed with the previous speaker, suggesting the words "and certain" be placed before that list of products.
13. After further discussion, the Sub-Committee agreed to the proposed amendment of Note 2 to Chapter 30.
14. The texts finalised by the Sub-Committee are reproduced in Annex E/5 to this Report.

* * *

1	2	4	5
NR0732E1a	Possible new Subheading Note 1 to Chapter 41.	<u>See Annex E/1.</u>	<u>See Annex E/1.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. There was general support in the Sub-Committee for the proposed amendment of the text of subheading 4101.20, i.e. inserting the word "unsplit" in the legal text of the subheading.
2. Regarding the proposed Subheading Explanatory Note to subheading 4101.20, the EC Delegate spoke in favour of such an amendment. In his view the text should remain in the proposal, for it was in line with the current position and the text had some value. However, there was no support in the Sub-Committee for the proposed Subheading Explanatory Note to subheading 4101.20.
3. The Delegate of Canada then put forward the idea of an Explanatory Note to clarify the term "split", which is splitting hides or skins in layers (and not cutting the hides or skins into halves or into other shapes). The Sub-Committee, on the other hand, felt that such an explanation, if deemed necessary, would be more appropriate in the General Explanatory Note to Chapter 41.
4. The Chairperson noted that such an amendment to the General Explanatory Note to Chapter 41, giving clarification to the words "whole hides and skins" and "split hides and skins", could be submitted under the Article 8 procedure and could be sent to the HS Committee for consideration at the Committee's next Session in September 2008. The EC Delegate, although not expressing a firm commitment, said that the EC would look at the possibility of submitting a draft text for examination by the HS Committee.
5. The texts finalised by the Sub-Committee are reproduced in Annex E/1 to this Report.

* * *

1	2	5
NR0733E1a	Possible amendment of the Nomenclature with respect to printer cartridges.	<u>See Annex E/2.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. Several delegates offered preliminary comments, relating the history of the issue and the current state of litigation, which, in the view of two administrations, was too uncertain to proceed with confidence. Other delegations stated that in their opinion the ongoing litigation should not serve as an impediment to creation of a single location for printer cartridges, and in fact such an amendment would avoid classification disputes within the WCO. The point was also raised that the possibility of a special provision for printer cartridges had been carried over from the last review cycle and should be concluded during the present one.
2. The Sub-Committee then turned to the working document, which contained the Secretariat's draft and the Secretariat's summary of issues. One administration noted that in the case of heading 84.43, the draft provided for cartridges outside the "Parts" subheading, and the question whether to locate the cartridges inside or outside the subheading for parts was one of the major differences of opinion among the administrations at the present. In his view, this issue related to concerns by some parties, public and private, that the treatment of cartridges under the Information Technology (IT) Agreement might be affected by changes in the HS, and although the WCO does not negotiate tariff issues, the relationship between the HS Convention and the IT Agreement might have to be kept in mind, if only as a peripheral issue.
3. The Chairperson noted that the Committee had mandated that the Sub-Committee continue work on the possible regrouping of printer cartridges, and suggested that the Sub-Committee discuss which heading it preferred. No consensus arose between the two headings under consideration, and the Chairman suggested that Sub-Committee might best continue by working on the detail of the legal texts and leaves the choice of heading to the Committee when the draft texts are sent to it.
4. The Secretariat's draft gave rise to the following comments :
 - a. The draft legal Note was too complex. In particular the reference to specific kinds of print media (ink, toner, etc.) and the reference to specific functionalities would likely preclude application to products utilising future technologies. One administration opined that the only condition necessary to state was that cartridges which serve merely to store the print media would be excluded from the heading. Another delegate stated that her administration felt that that the cartridges provided for by the possible amendment should be specially shaped to fit into the printing device.
 - b. Empty cartridges should be included in the draft provision. One administration stated that it was not be necessary to specify the inclusion of empty cartridges since GIR 2 (a) would determine whether a new, unfilled cartridge was within the scope of the subheading, and used cartridges were never completely empty, that is, devoid of print media. Another administration stated that the subheading should not cover used cartridges which are unsuitable for reuse.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

- c. Criticism had arisen within one administration that the second and third sentences of the legal Note were contradictory, and that they were not consistent with the first sentence.
- 5. The Delegate of Japan informed the Sub-Committee that her administration was planning to submit an alternate proposal for bringing printer cartridges together. The US Delegate noted that his administration was endeavouring to prepare a proposal during the intersession between the 37th and 38th Sessions of the Sub-Committee. The Chairperson thanked both Administrations and encouraged them to submit drafts in due time.
- 6. The Delegate of Canada suggested that given the apparent differences on several aspects of the Secretariat's draft, it might be useful for administrations to participate in an electronic drafting exercise during the intersession, in an attempt to create a consensus or, in the absence of such a consensus, to produce an informal document setting forth alternative texts which would translate the conceptual differences into actual choices for the Sub-Committee, and ultimately if necessary, the HS Committee. He volunteered his administration to serve as a co-ordinator, as it had done during the last review cycle for the proposals in the high-tech area.
- 7. There was broad support for such a project, and Australia, Brazil, the EC, China, US, Japan and Switzerland specifically indicated interest in such an exchange. Canada encouraged other interested administrations to join the process during upcoming months. Some administrations cautioned the Sub-Committee that current positions were still far apart, and stressed that individual administrations might wish to submit complete proposals of their own for the next Session. Some administrations expressed that it was important for the Secretariat to present, in preparation for the 38th Session, the resulting drafts, statements of views, and a revised draft of its own incorporating as much of the alternative views as practicable.
- 8. Having decided those points, the Sub-Committee agreed that the Report of the current Session would include a bilingual annex carrying forward, for the time being, the Secretariat's draft, in square brackets (see Annex E/2 to this Report), and that the issue would be revisited during the Sub-Committee's next (38th) Session.

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1	2	5
NR0734E1a	Possible new Note 6 to Chapter 95.	<u>See Annex E/7.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. As requested by Japan, this Agenda item was discussed together with Item III.A.14 (Possible amendment of subheading 9504.30).
2. Following the introduction of the working document by the Chairperson, the Delegate of Canada explained that this matter was not of particular concern to his administration and that the motivation behind the Canadian proposal was to address the concerns expressed by Japan at the last session. He thanked Japan for accepting the Canadian proposal, with the understanding that the Japanese proposal presented in paragraph 29 of the working document was an alternative, if the Canadian proposal was not agreed upon by the Sub-Committee. Turning to the points raised by the Secretariat in paragraphs 39 and 40 of the working document, he said that to his administration's knowledge the machines operated by coins, banknotes, etc., even when used in the home or in other establishments without requiring payment were still the machines of that same type. When used in the home, means of payment of such machines would normally be deactivated, or if not deactivated, would be used as a sort of saving bank, especially for children. Nevertheless, at the time of importation, these machines would all have provisions for methods of payment and would all fall in the same subheading.
3. The US Delegate clarified that he still supported his administration's proposal given in the Annex to the working document as Option 2. He explained that the trade association specialised in entertainment type electronics in his country would have no problem with combining their arcade type machines with video game consoles, if they had a screen. Of course, if they did not have a screen, they would fall in provisionally adopted subheading 9504.50. As for the new structure suggested by Japan in paragraph 29 of the working document, indicating that his administration was in fact flexible, he questioned whether it was really necessary to make a distinction on the basis of whether any of the machines at issue were operated by payment methods or not and, if so why, considering, especially with the changing technology, means of payment of certain new types of these machines would soon not be seen and they perhaps would be activated even by cellular phones, for example, as a payment medium. Then, it would be very difficult to determine whether or not they accept coins, etc.
4. The EC Delegate in general agreed with the Canadian proposal made in paragraph 21 of the working document, but, taking into account point (5) given by the Secretariat in paragraph 36, he had certain doubts about the proposal made in paragraph 22 for a new text for the provisionally adopted subheading 9504.50 as to whether in fact the addition of the new part was necessary, pointing out that the EC needed some time to review that proposal and to reflect thereupon.
5. The Delegate of Canada noted that, although the issue of making a distinction between the games operated by payment methods and those operated without payment existed in the current subheading 9504.30 as well as in provisionally adopted subheading 9504.60, he was open to considering the questions posed by the US Delegate, because the US approach

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

might be further simplifying the HS and it would also resolve the issue that motivated Canada for making its proposal.

6. At this point, the Delegate of Japan stated her confusion with the differing opinions expressed so far and asked the Sub-Committee to clarify whether it preferred to keep or delete paragraph (c) of the proposed new Note 6 given in the Annex to the working document.
7. Reflecting upon a question posed by the Chairperson as to whether all video game machines and consoles should be included in the same subheading (9504.60) from 2012 onwards (as pointed out in paragraph 36 of the working document), the Delegate of Brazil said that the Sub-Committee currently was not dealing with only the PlaystationStation2-type, naïf video games, but gambling machines or slot machines, and his administration was not in favour of classifying gambling machines together with video games of the provisionally adopted subheading 9504.50. Referring to the Japanese proposal given in paragraph 29 of the working document, he said that the text proposed for subheading 9504.91 should state "other than those which are not video game consoles and machines". With this proposal, however, gambling machines would be included in subheading 9505.50. Therefore, Brazil was against this proposal but had an alternative for the provisionally adopted structure of heading 95.04. In the text of provisionally adopted subheading 9504.60, the term "other" and the comma following the term "games" could be deleted (or placed in square brackets) for providing a balance amongst the subheadings of heading 95.04, and then a Subheading Note could be introduced to state that "Subheading 9504.60 takes precedence over all other subheadings of heading 95.04." This way, all machines, including video game machines, operated by payment methods would fall in subheading 9504.60.
8. However, the US Delegate informed the Sub-Committee that, in the understanding of his administration, the newly created 2012 subheading 9504.50 would take the present subheading 9504.10 and at least part of subheading 9504.60 as provisionally adopted. Therefore, in the understanding of his administration, the video game machines of provisionally adopted subheading 9504.50 would cover certain so-called arcade games. However, from the discussions held so far, it was not clear whether this was the intent of the Sub-Committee and the Committee or not, though the US was flexible to proceed with any approach agreed by the rest of the Sub-Committee.
9. The Delegate of Canada found the point raised by Brazil an important one, as it seemed that one thing to consider was the inclusion of arcade style video games in the provisionally adopted subheading 9504.50, agreeing however that it would probably be very difficult to not also include various gaming machines that are now almost entirely based upon a video screen in new subheading 9504.50 and probably all slot machines used for gambling would meet the definition in the proposed new Note 6 and would therefore also fall in subheading 9504.50. He was of the view that this perhaps went further than that had been considered when the subheading was provisionally adopted. It was therefore necessary for the Sub-Committee to clarify what it wished the scope of this new subheading would be.
10. Upon a request by the Chairperson, the Delegate of Brazil said that his administration would submit its comments and proposals to the Secretariat in the intersession. He also drew the attention of the Sub-Committee to a possible misalignment between the English and French versions of the proposed Note 6 (c), pointing out that the parenthetical provision

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

in the French version included the expression "et les modèles à poser" while the English version did not.

11. Following the above discussions, the Sub-Committee agreed to re-examine this matter at its next session on the basis of Option 2 presented in the Annex to the working document, subject to placing the appropriate parts in square brackets taking into account the Canadian proposal.
12. Option 2 placed in square brackets is set out in Annex E/17 to this Report.
13. The Representative of the ICC called the attention to the use of wordings and to make sure that there was no conflict when the Sub-Committee was drafting texts. The use of the words video games, audiovisual games, electronic games or electronic game, all had a connotation of actually the "software". There were some thoughts in industry that, if these words were used without a qualifying or clarifying word like electronic game consoles or machines, the software which was provided in heading 85.23 might be pulled in, or confused with, this language.
14. As regards the scope of provisionally adopted subheading 9504.50, following a proposal made by the Secretariat, the Sub-Committee agreed to submit this issue to the Harmonized System Committee for consideration at its 42nd Session. The Secretariat was asked to make it clear to the Committee what should be the structure of heading 95.04 in the "future" (not within the context of the provisionally adopted provisions) and to report the conclusions of the Committee to the Sub-Committee's 38th Session. The possible misalignment pointed out by Brazil would also be studied by the Secretariat.

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1	2	5
NR0735E1a	Possible amendment of Note 3 to Chapter 4.	<u>See Annex E/9.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Delegate of Japan pointed out that her administration could not support the amendment proposed by Australia.
2. Firstly, in her opinion, the grounds presented in Doc. NC1173E1a (HSC/39) were not valid since the products that met the requirements of Note 3 to Chapter 4 did exist and were traded internationally. Such products were imported into Japan as cheeses of heading 04.06.
3. Secondly, according to the research conducted by her administration, the former Codex Standards for Whey Cheeses had covered only whey cheese obtained by the concentration of whey. This Standard was subsequently revised in line with the proposal by the International Dairy Federation (IDF), with a view to covering also whey cheese obtained by the coagulation of whey. The reason for the revision presented by the IDF was as follows : the first type of whey cheese (obtained by the concentration of whey) was covered by then existing Codex Standard for Whey Cheeses. However, the second type (obtained by the coagulation of whey) was not covered by any Codex Standard referring to "cheese" as the "Name of the Food". Consequently, many well-known varieties of such products (including Ricotta, Mizithra, and Requeson) were not recognised within the Codex food standards system as either "cheese" or "whey cheese".
4. At the same time, under the HS, they were already classified in heading 04.06 (subheading 0406.10) as "cheese" (e.g., ricotta type cheese), regardless of the legal Note in question. The intended effect of the revision of the Codex Standard for Whey Cheese was fully reflected in the current HS.
5. Finally, she reminded the Committee that the criteria of Note 3 to Chapter 4 in question were agreed upon at the 48th Session of the Nomenclature Committee with a view to clearly differentiating whey cheese of heading 04.06 from whey concentrates of heading 04.04. If the Note in question were to be amended as proposed by Australia, certain whey concentrates that should not be treated as cheese would be reclassified in heading 04.06, which might have a severe detrimental effect to the economy of Contracting Parties.
6. One delegate supported the previous speaker submitting that his administration did not experience any problems classifying whey cheese under the current provisions of the Nomenclature.
7. The Delegate of Australia reiterated her administration's concerns that, according to the industry in her country, fresh whey cheese typically featured dry matter content below 70%. She contended that there would be no transfer of products since there were practically no whey products other than cheeses that would meet all the three criteria of Note 3 to Chapter 4. Furthermore, since whey cheeses were obtained by both concentration and coagulation, she suggested that a reference to coagulation be added to the text of the Note. She undertook to provide additional information with regard to the concerns expressed vis-à-vis the proposal at hand by the next session.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

8. Two delegates expressed their support of the proposed amendment agreeing that it would not result in any transfer of products. One of these delegates sought clarification as to what the Delegate of Japan understood under the expression "severe detrimental effect to the economy of Contracting Parties".
9. After a brief discussion, it was agreed to place the proposed amendment in square brackets and to re-examine it at the next session, in light of the additional information to be provided by Australia.
10. The text of the proposal is reproduced in Annex E/9 to this Report.

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1	2	4	5
NR0736E1a	Possible new heading 96.19 (Proposal by the US).	<u>See Annex E/11.</u>	<u>See Annex E/11.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. After a short introduction of the working document NR0736E1a by the Chairperson, the US Delegate explained the Note sent by his Administration. As explained in the Note, the US Administration had a preference to leave "flat" products, such as disposable surgical drapes, hospital bed and wheelchair pads, etc., consisting of a thin absorbent layer and a plastic sheeting liner, where they were presently, and not to transfer these products to the new heading 96.19. The US Administration could support a new exclusion in the Explanatory Note to heading 63.07, along the lines of the new exclusion (k) to the Explanatory Note to heading 56.01, as suggested by the Secretariat in paragraph 29 of Doc. NR0736E1a. With regard to heading 56.03, his Administration was of the view that such exclusion would not be necessary. In respect of the location of the new heading, the US Delegate stated that his Administration was still in support of creating the new heading within Chapter 96.
2. When asked by the Chairperson, the Sub-Committee unanimously agreed to locate the new heading within Chapter 96, i.e., heading 96.19.
3. To clarify the scope of the new heading at the legal level, that it would include, for example, "traditional textile babies" napkins (diapers), presently covered by heading 61.11 or 62.09, the Delegate of Switzerland suggested adding ", of any material" to the text of heading 96.19. The Sub-Committee agreed to the Swiss proposal.
4. In line with the transfer of the textile babies' napkins (diapers) to the new heading 96.19, and the deletion of these products from the Explanatory Notes to headings 61.11 and 62.09, the EC Delegate proposed to amend the Exclusion Note 1 (u) to Section XI, along the lines of the Exclusion Note 2 (p) to Chapter 48, to make clear that these products would fall under Chapter 96. The Sub-Committee agreed to this proposal as well.
5. The Sub-Committee furthermore discussed the use of the expression "sanitary towels". Within a heading for products of personal hygiene, the expression "sanitary towels" might have a broad interpretation. In view of the fact that the expression "sanitary towels" already existed in the Nomenclature for many years, there was no support for new language for that expression as suggested by the Delegate of Brazil because this could create confusion. However, to clarify its meaning and to avoid misinterpretation of the expression "sanitary towels", the Sub-Committee agreed with the proposal of the Delegate of Canada to insert the word "pads" in parenthesis after "sanitary towels" in the text of heading 96.19.
6. Regarding the so-called "flat" products, such as disposable surgical drapes, hospital bed and wheelchair pads, etc., consisting of a thin absorbent layer and a plastic sheeting liner, all representatives shared the view expressed by the US Delegate, that these products should not be transferred to the new heading 96.19. These products were not worn on the body, but were laid on the bed or in the wheelchair. However, given the fact that these products might be considered as "similar sanitary articles" as mentioned in the heading text of heading 96.19, the Sub-Committee agreed to place the word "sanitary" of this part of the heading text in square brackets, and to reflect on the deletion of this word during the intersession.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

7. Thereupon, the Sub-Committee agreed to reformulate into an exclusion paragraph, the last part of the proposed Explanatory Note to heading 96.19, to clarify that disposable surgical drapes, hospital bed and wheelchair pads, etc., were not covered by this heading. It was left to the Secretariat to formulate a draft text for consideration during the intersession.
8. The Sub-Committee further agreed to the proposed amendment of the Explanatory Note to heading 30.05, last paragraph, exclusion (d), on page VI-3005-1.
9. After further discussion, the Sub-Committee agreed to certain editorial amendments, i.e., (i) to amend the text of exclusion (f) in the Explanatory Note to heading 48.18 and the text of Exclusion Note 1 (f) to Chapter 56 to read as the text of exclusion (k) in the Explanatory Note to heading 56.01; and (ii) to renumber current Item (3) as (2) in the Explanatory Note to heading 56.01 on page XI-5601-2 (Part (A), first paragraph).
10. Finally, the EC Delegate proposed to insert "pantyliners" (as in paragraph 21 of Doc. NR0736E1a) in the text of the Explanatory Note to heading 96.19, as an example of products covered by the new heading. The Chairperson concluded that it could be left to the Secretariat to consider the best place to insert this example in the text.
11. The Sub-Committee concluded the discussion by agreeing to place the complete text of the proposed amendments to the Nomenclature and to the Explanatory Notes in square brackets, and to continue the examination of the outstanding issues at its next session.
12. The text of the proposal, put in square brackets, is reproduced in Annex E/11 to this Report.

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1	2	5
NR0737E1a	Possible amendment of headings 20.08 and 20.09.	<u>See Annex E/8.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The US Delegate opened the discussions by providing a few clarifications. He explained that the dried, sweetened cranberries which were the subject of his proposal were similar to raisins, whereas the European cranberries were more acidic. His Administration had consulted sector representatives and producers, who had been unanimous in stating that there were several Latin names for cranberries, but only cranberries of the genus *Vaccinium macrocarpon* were of interest to them, and other types of berries should not be included.
2. He went on to explain the other reasons behind his Administration's request. The fact that cranberries of the genus *Vaccinium macrocarpon* were bigger, fleshier and juicier made them more profitable commercially. Also, scientific studies had demonstrated that cranberries of the genus *Vaccinium macrocarpon* offered significant therapeutic properties and health benefits whereas, as far as he was aware, no studies of this kind had been performed for other types of cranberries. Finally, and as pointed out by the Secretariat in the working document, species of the genus *Vaccinium oxycoccus* and *Vaccinium vitis-idaea* differed from *Vaccinium macrocarpon* in size, shape and method of cultivation.
3. As regards the most appropriate French translation of the English term "cranberries", the US Delegate was of the opinion that none of the terms frequently encountered in French, such as for example "airelles rouges", "grandes airelles rouges" and "canneberges", corresponded specifically to the variety *Vaccinium macrocarpon*.
4. In reply to a question from the Chairperson, the US Delegate indicated that his Administration wished to restrict the scope of the subheading text to cranberries of the genus *Vaccinium macrocarpon* only, thus excluding the other varieties of fruit of the genus *Vaccinium*.
5. The EC Delegate stated that he did not agree with the previous speaker. He said that his administration preferred the Secretariat's proposal and that a compromise solution should be found even if the United States did have a particular interest in cranberries of the genus *Vaccinium macrocarpon*. In these circumstances he suggested that the US Administration was at liberty to create specific subheadings at the 8-digit level to accommodate its commercial interests where this particular product was concerned. In his view it would not be desirable to restrict the scope of the subheading concerned, especially as the EC also had a very large market in cranberries of the genus *Vaccinium oxycoccus*, which had similar characteristics and were used for the same purposes as the cranberries grown in the United States. Consequently, the EC advocated a broader description of the fruits, and a subheading with a more comprehensive scope.
6. The Delegate of Brazil asked whether the United States Administration had made a proposal in relation to all species of cranberries in general, or only to species which were grown in the United States; there were at least 10 countries producing this type of fruit, including for example Russia, China and Canada, amongst others.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

7. In reply, the US Delegate said that these fruits could indeed be grown all over the world, but on the European market they were less well-known and there was little demand for them. This was why his Administration's intention was to concentrate solely on cranberries of the genus *Vaccinium macrocarpon*.
8. The Delegate of Canada said that his Administration shared the same interests as the US Administration where the creation of a separate subheading for cranberries was concerned. However, in the light of the arguments put forward by the EC Delegate, it seemed logical to broaden the scope of the subheading to embrace cranberries of the genus *Vaccinium oxycoccus*. With regard to the third variety, cranberries of the genus *Vaccinium vitis-idaea*, the Delegate of Canada considered that a study should be conducted in order to check that this species was in fact consumed, and that it was used in the same manner as the other two species.
9. The Delegate of Japan supported the Secretariat's proposal that the three types of cranberries be grouped together in a single subheading. However, she also asked whether it would be possible to distinguish, in a simple and objective manner, between the three species concerned, in the event that the United States' proposal was accepted.
10. The Secretariat took the floor, inviting delegates to examine the working document which listed the criteria for distinguishing between the various species under discussion.
11. After listening to the arguments put forward by other delegations, the Delegates of the United States and Canada indicated that they were willing to accept the Secretariat's proposal.
12. Following these discussions, the Sub-Committee decided to delete the square brackets and replace them with parentheses in the English version, while in the French version the term "airelles rouges" was retained. The same applied to the three Latin terms relating to the three types of cranberries, which were retained in both versions.
13. In conclusion, the Sub-Committee arrived at a consensus in favour of adopting the proposal for the amendment of headings 20.08 and 20.09.
14. The text adopted by the Sub-Committee is reproduced at Annex E/8 to this Report.

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1	2	4
NR0738E1a	Possible amendment of Note 1 to Chapter 38.	<u>See Annex E/15.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. After the introduction of the working document by the Chairperson, the US Delegate took the floor to express his concerns about the proposed amendment to the Explanatory Notes to Chapter 38 given that, in his opinion, the proposed amendment would not result in a substantial improvement of the current texts. He further affirmed that, in particular, the concept "valued for their nutritional content itself" is ambiguous, and therefore he proposed to submit the text of the proposal to the Harmonized System Committee, without removing the square brackets.
2. Moreover, he affirmed that he could accept the submission of the last part of the proposal, concerning the new item 49, without the square brackets. Finally, he remarked that the term "vegetable" (penultimate line of the proposal) was in square brackets only in the English version and proposed, given that that term was in his opinion not necessary, its deletion from the text in both linguistic versions.
3. Supporting the previous speaker, the Delegate of Canada took the floor to indicate that his administration saw no value in changing the Explanatory Notes without a change in the legal text. He also agreed with sending the proposed text in square brackets to the Harmonized System Committee.
4. However, the Delegate of Brazil called the Committee's attention to paragraph 6 of the working document, which stated that "the Committee felt that amendments of the legal provisions and the Explanatory Notes might be required in order to clarify the distinction between products of heading 38.24 and those covered in heading 21.06". He further affirmed that, in his opinion, the proposed amendment, based on a previous Brazilian proposal, could be of great use in order to distinguish between products of Chapter 38 and foodstuff of Chapter 21.
5. The EC Delegate shared the view of the Delegate of Brazil and pointed out that the Explanatory Note under consideration was necessary in order to establish a clear line of division between Chapters 38 and 21 and, in particular, to define unambiguously the concept of "nutritive value". Regarding the term "vegetable", while supporting the alignment of both linguistic versions suggested by the US Delegate, he favoured keeping the term in square brackets for the time being.
6. The Chairperson summarised the discussion and suggested forwarding to the Harmonized System Committee a bilingual annex with the proposal presented by the Secretariat in square brackets, excluding the last paragraphs concerning the new Item 49 which would be excluded from square brackets. She also pointed out that the term "vegetable" included in penultimate line of the proposal would be placed in square brackets in both linguistic versions of the bilingual annex.
7. After further discussions, the Sub-Committee agreed to proceed on the basis of the proposal of the Chairperson.
- 8.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

9. The text of the proposal, with some of its parts in square brackets, is reproduced in Annex E/15 to this Report.

* * *

1	2	5
NR0739E1a	Possible amendment of heading 85.17.	<u>See Annex E/12.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee agreed to the draft amendments to the French texts for heading 85.17, one-dash subheading 8517.6 and two-dash subheading 8517.62, which appeared in the Annex to the working document NR0739B1a.
2. Several delegates noted that the purpose of the amendments was to align the French version to the existing English version, and that the amendments did not involve a change of scope.
3. The Sub-Committee agreed that corresponding amendments to the French version of the Explanatory Notes should be restricted to the areas which are directly affected by the subject legal changes, and that the four changes suggested by the Secretariat in paragraph 7 of the working document NR0739E1a appear to be the only changes necessary for this matter.
4. The Article 16 amendments, which will be forwarded to the Committee for its approval, are reproduced in Annex E/12 to this document.

* * *

1	2
NR0740E1a	Possible amendment of subheading 9504.30 (Proposal by Japan).

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

As requested by Japan, this Agenda Item was discussed together with Item III.A.8 (Possible new Note 6 to Chapter 95) (see Annex C/8 above).

* * *

1	2
NR0741E1a	Possible amendments of the Nomenclature (Proposal by the Research Group for Biological Arms Control).

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. Opening the debate, the Delegate of Canada noted that the Biological and Toxin Weapons Convention (BTWC) was an instrument of the United Nations. The Research Group for Biological Arms Control had proposed that the HS be amended to identify certain goods that can be used in the production of such weapons. While his Administration recognized the sincere concerns and the pure motives of the Research Group in making this proposal, to the knowledge of his Administration the Research Group was neither affiliated with nor sanctioned by the Signatories to the BTWC or the United Nations.
2. He continued to state that the goods the Research Group proposed to identify in the HS were essentially a list of products of which the Research Group felt were of interest under the BTWC and for the monitoring and control of international trade in biological dual use items. He pointed out that, in the past, the Signatories to the BTWC had undertaken discussions to create such a list of products to which the BTWC applied. However, those talks had ended in 2001 without success. In considering a list of products to be identified in the HS for the purposes of enforcing the BTWC, the Sub-Committee could be seen as substituting itself for the proper authority, namely the Signatories to the BTWC, who had apparently abandoned such efforts.
3. The Delegate of Canada continued by stating that in the past, the Sub-Committee had considered proposals from non-governmental organizations such as the Secretariats of the Basel and Rotterdam Convention and the Montreal Protocol, as well as the proposal of the FAO which was discussed previously during this Sub-Committee's Session. In these instances, however, the proposals were submitted by a body that was either the duly sanctioned representative of the related international accord or an office of a recognized international organization. The Research Group, as noted earlier by Canada, was a private academic organization which, to the knowledge of the Canadian Administration, did not have authority to speak on behalf of the BTWC, its Signatories or the United Nations. In the view of the Canadian Administration, consideration of the proposal would establish a precedent, which would allow any organization with an interest in an environmental or social issue, to submit a proposal to amend the HS to address their specific needs or concerns. It could even allow commercial interests to submit proposals directly to the Review Sub-Committee, or the HS Committee. That would not be a precedent that Canada could support. He went on to state that the Report of the 41st Session of the HS Committee indicated that several administrations had spoken to express their concerns with the procedure. On the other hand, the HS Committee Report did not indicate that any administration spoke to refute such concerns or to express support for the proposal. Thus, and recognizing that there might be other options, such as a WCO Council Recommendation which the HS Committee could consider, Canada asked the Sub-Committee whether there was actually support in the Sub-Committee to continue discussion of the proposal by the Research Group.
4. The Delegate of Japan agreed with the comments made by the Delegate of Canada. The Japanese Administration also had concerns about the procedure of this proposal, submitted by a private institute. As mentioned by Canada at the 41st Session of the HS Committee, several delegates had expressed their concern in respect of the procedure of

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

this proposal. Therefore, the Sub-Committee should first consider the appropriateness of the proposal, that is to say, whether it was valid, or not.

5. At this stage, the Director reminded the Sub-Committee of the historical treatment of this Agenda Item. At its 36th Session, the Sub-Committee had seen no objection in proceeding with the request by the Research Group. He observed that the present attitude in the Sub-Committee seemed to be quite different.
6. Responding to the comments made by the Director, the Delegate of Canada added to the historical context that the proposal of the Research Group had been posted shortly before the commencement of the Sub-Committee's 36th Session. At that Session, the Canadian Administration had raised the same concerns. He recalled that the Canadian Administration had also raised these concerns at the HS Committee's 41st Session, where other Administrations had supported these concerns. As concluded at the 41st Session, the matter was open for further review by the Sub-Committee at the present Session and then potentially again, if necessary, at the HS Committee's next Session in September 2008. It was for those reasons that the Canadian Administration had received the impression that there might not be an interest in the Sub-Committee in proceeding with the discussion of the proposal and, therefore, his Administration had posed the question today as to whether or not there was interest in discussing the proposal.
7. Since no delegate spoke in favour of examining further the draft amendments of the Nomenclature for the items listed by the Research Group, the Chairperson concluded that there was consensus in the Sub-Committee not to pursue the matter. This result would be reported to the HS Committee, together with an observation regarding the possibility of creating a WCO Council Recommendation on the insertion in national statistical nomenclatures of subheadings for the goods of which the Research Group felt were of particular interest under the BTWC.

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1	2	4
NR0742E1a	Possible amendment of heading 06.03.	<u>See Annex E/14.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee agreed by consensus to insert the Latin name for lilies in the text of the new sub-heading 0603.15.
2. With regard to the French linguistic version, it was agreed that the text of the subheading should read "lis", this spelling being the one most commonly used.
3. The texts finalised by the Sub-Committee are reproduced in Annex E/14 to this Report.

* * *

1	2	4
NR0743E1a	Possible amendment of heading 84.79.	<u>See Annex E/13.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. Opening the discussion, the Delegate of China said that the Chinese Administration could support the Secretariat's proposal, referred to as Option 2 in the Annex to the working document.
2. On the contrary, the US Delegate, supported by the Delegate of Norway, suggested creation of a one-dash subheading with the wording "Passenger boarding bridges" only, because there was no difference between the passenger boarding bridges used at airports and the one used at seaports. However, taking into account that the Chinese Administration was concerned with having a separate subheading for the passenger boarding bridges for airports, some other delegates were in favour of the Secretariat's proposal.
3. After further discussion related to the possible use of the wording "For airports" instead "Of a kind use in airports" in the particular two-dash subheading, the Review Sub-Committee accepted, without any modification, the Secretariat's proposal set forth in the Annex to the working document.
4. The text agreed by the Sub-Committee is reproduced in Annex E/13 to this Report.

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1	2
NR0744E1a	Possible amendment of Note 8 (b) to Chapter 85 (Proposal by Japan).

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee took note of the non-paper submitted by the US Administration (English language) and the corresponding non-paper provided by the ICC (English and French versions). The US Delegate and the expert from the ICC stressed that the non-paper represented the current state of draft language for a possible amendment to Note 8 (b) to Chapter 85 that some differences of opinion regarding certain portions for the draft still existed within the trade and governments, and that further modifications were likely.
2. The Chair asked the Sub-Committee whether there was interest in including the non-paper texts as part of the working document for the next RSC Session. The submitters of the non-papers suggested that it would be best for the Secretariat to wait in anticipation of a further draft.
3. The Sub-Committee agreed to continue consideration of the matter during its next (38th) Session.

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ANNEX D

NEW QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NR0745E1a	Use of the singular and plural forms of the term "seed" in the Nomenclature.			<u>See Annex E/16.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. After the Chairperson had introduced the working document, the US Delegate expressed his acceptance of the Secretariat's proposal, since in the English version use of the singular or plural did not change the classification.
2. With regard to the question raised in paragraph 10 of the working document concerning use of the term "de semence", the EC Delegate voiced his opinion that there was nothing to be changed in the French version.
3. The Sub-Committee then decided to adopt the text proposed by the Secretariat.
4. The text agreed upon by the Sub-Committee is set out in Annex E/16 to this Report.

* * *

1	2	5
NR0746E1a	Possible amendment of legal texts and Explanatory Notes to Chapter 95 (Proposal by the EC).	<u>See Annex E/17.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. As was requested by Japan, taking into account the Secretariat comments made in paragraphs 9 and 10 of the working document, the Sub-Committee agreed to have preliminary discussions on this Agenda item. Highlighting the main points introduced in the working document, the Chairperson informed the Sub-Committee that a non-paper had been submitted by Canada before the discussions, containing the following proposals :
 - "e) Les vêtements de sport ou les travestis en matières textiles, des Chapitres 61 ou 62, comportant des renforts ou des accessoires de protection incorporés (coudières ou genouillères, par exemple), pour la pratique de certains sports comme l'escrime, le hockey sur glace ou le motocross." (Fr.)
 - "(e) Sports clothing or fancy dress of textiles, of Chapter 61 and 62, which incorporate reinforcements or protective accessories (for example elbow or knee pads), used for certain sports such as fencing, ice-hockey or motocross." (Eng.)
2. The Delegate of Canada apologised for the late arrival of his administration's non-paper, due to a statutory public holiday in Canada, and clarified that the motive behind the Canadian proposal was that, given the existing Note 1 (e) to Chapter 95 had endured for sometime without any difficulty until the presentation of the recent classification issues which were addressed by the HSC, it might be preferable to avoid changing that text and to merely supplement it with a text to support the decisions taken by the Committee. He continued by indicating that, in the French text of the Canadian proposal, the term "ou" in the first line could be replaced by the expression ", ainsi que", and in the shaded area of the proposed text the expression "which incorporate" could be replaced by "whether or not incorporating ("même comportant" in French)".
3. The EC Delegate informed the Sub-Committee that, following the modifications suggested the Canadian proposal would meet the EC's concerns, subject to simply the insertion, in the English version, of a comma after "fancy dress".
4. For alignment of the English version to the French, the Delegate of Norway preferred the expression "of textile materials", which was in the original proposal by the EC, to the expression "of textiles", which was in the Canadian proposal and in the present Note 1 (e) to Chapter 95. He also pointed out that the new proposal appeared to indicate that "fancy dress" could also be used for certain sports such as fencing or motocross, which he believed was not the case. Therefore, he proposed to re-order the wording in the first line so as to state "Fancy dress or sports clothing".
5. Based upon the support expressed by the EC, US and Canada, the Sub-Committee agreed to use the expression "of textile materials" in the first line of the English version.
6. As regards the Norwegian comment concerning the re-ordering of "sports clothing" and "fancy dress", the US Delegate stated that his administration's original idea was to separate these two groups of product in two separate Notes, but should the Sub-Committee continue

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

with the text proposed by Canada, the first line could start with "Fancy dress" and then it could be separated from "sports clothing" by a semicolon.

7. Pointing out that the present Note 1 (e) to Chapter 95 specified that both "sports clothing" and "fancy dress" were articles "of textile materials" and "of Chapter 61 or 62", the Delegate of Canada wondered whether his proposal for changing the expression "which incorporate" to "whether or not incorporating" could take care of the concerns expressed by Norway and the US. Nevertheless, he concluded, the question of what provisions would apply to what products could be studied by the Secretariat in the intersession.
8. Following the above discussions, the Sub-Committee agreed to place the Canadian proposal in square brackets and insert it (as modified) in the Annex to the working document as an option to the original EC proposal, and to re-visit this matter at its next session on the basis of a new document to be prepared by the Secretariat taking into account any further reflections to be submitted by administrations.
9. The texts placed in square brackets are set out in Annex E/17 to this Report.

* * *

1	2	5
NR0747E1a	Possible amendment of Note 3 (d) to Chapter 38.	<u>See Annex E/18.</u>

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (O. Eng.)

1. Introducing the working document, the Chairperson invited delegates to consider the possible amendment of Note 3 (d) to Chapter 38 as proposed by the Secretariat.
2. The Delegate of Japan took the floor to propose the deletion of the reference to the stencil correctors from the legal Note given that, in her opinion, these products were currently obsolete.
3. However, the Director, while accepting that the references to obsolete products should be deleted from the Nomenclature, explained that stencil correctors are still used in some countries, and therefore it would be advisable to keep, for the moment, the reference to those products in the legal Note.
4. The EC Delegate shared the view of the Director and affirmed that it would be necessary to have more information in order to justify a possible deletion of the term "stencil correctors" from the legal Note.
5. Concerning the possible amendment of Note 3 (d) to Chapter 38 proposed by the Secretariat, the EC Delegate affirmed that he was in favour of it with some modifications. In this connection he proposed to replace the expression "correcting fluids" by "correcting products including those in liquid form". Finally, he suggested a modification in the French version consisting in replacing the expression "de vente au détail" by "pour la vente au détail". No delegate disagreed with the last proposal affecting only the French version.
6. Supporting the previous speaker, the Delegate of Brazil also proposed to modify the wording of the amendment presented by the Secretariat in order to clarify that "correction tapes" are not considered to be "correcting fluids".
7. The Chairperson reminded the Sub-Committee that the aim of the amendment of the legal Note 3 (d) to Chapter 38 presented by the Secretariat was simply to clarify that heading 38.24 also covered "correction tapes". She further remarked that the scope of that heading, after the amendment of the note, should not be increased to include other products.
8. In this context, the US Delegate took the floor to affirm that the concept of the term "correction tapes" should be clarified in order to avoid possible transfers from other parts of the Nomenclature to heading 38.24 (e.g., from Chapter 48, from heading 96.12). He further stated that the Harmonized System Committee, at its last session, agreed to classify a particular type of correction tape, which was a very specific product, in heading 38.24. He remarked that drafting a general legal Note to cover a specific product would be a difficult task for the Sub-Committee.
9. He also proposed in order to overcome the problems expressed by Brazil and the EC, to modify the order of the goods included in the legal Note by inserting the reference to the correction tapes at the end of the list.

OBSERVATIONS OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE (contd.)

10. The Chairperson took the floor to call to the Sub-Committee's attention the question raised by the Secretariat in paragraph 16 of the working document concerning the possibility of preparing an Explanatory Note to define "correction tapes" for the purposes of heading 38.24. She further asked the Sub-Committee to express its views on the matter.
11. The Delegate of Canada took the floor to affirm that, in his opinion, it would be difficult to define the concept of "correction tapes" in an Explanatory Note. He further suggested a modification of the wording of the Note by inserting a reference only to tapes impregnated with liquids instead of "correction tapes". That alternative would avoid, in his opinion, making references to an entire category of goods.
12. The Chairperson summarised the discussion and suggested to put, in square brackets, the proposal of the Secretariat for the amendment of Note 3 (d) to Chapter 38 including the term "correction tapes" at the end of the list of goods. It was agreed that the text will be re-examined at the next session of the Sub-Committee taking into account the concerns rose by Members.
13. She finally affirmed that, during the intersession, the Secretariat would study the matter and, in particular, the possibility of providing a clear definition for the product under consideration in order to avoid transfers from other parts of the Nomenclature after modification of the Note in question. The Chairperson finished by inviting all administrations to consult on the matter with technical experts and to provide their comments to the Secretariat.
14. The Sub-Committee agreed to proceed on the basis of the proposal of the Chairperson.
15. The texts, placed in square brackets, are reproduced in Annex E/18 to this Report.

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