



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

NR0722E1a

-  
36<sup>th</sup> Session  
-

O. Eng./Fr.

Brussels, 27 November 2007.

DRAFT REPORT OF THE 36<sup>TH</sup> SESSION OF THE  
HARMONIZED SYSTEM REVIEW SUB-COMMITTEE

1. The HS Review Sub-Committee held its 36<sup>th</sup> Session from 19 to 27 November 2007 at the Headquarters of the World Customs Organization in Brussels. The meeting was chaired by Mr. S. SANGARE (Côte d'Ivoire).
2. The following 44 WCO Members and one Customs and Economic Union were represented :

Members

|                          |                        |                    |
|--------------------------|------------------------|--------------------|
| ALGERIA                  | DEM. REP. OF THE CONGO | RUSSIAN FEDERATION |
| ARGENTINA                | DOMINICAN REPUBLIC     | SENEGAL            |
| AUSTRALIA                | FRANCE                 | SERBIA             |
| BANGLADESH               | GHANA                  | SLOVAKIA           |
| BELARUS                  | INDIA                  | SPAIN              |
| BELGIUM                  | JAPAN                  | SRI LANKA          |
| BRAZIL                   | JORDAN                 | SWITZERLAND        |
| CANADA                   | KAZAKHSTAN             | THAILAND           |
| CHINA (People's Rep. of) | MADAGASCAR             | TUNISIA            |
| COLOMBIA                 | MALAYSIA               | TURKEY             |
| CONGO (Rep. of the)      | MOROCCO                | UKRAINE            |
| COTE D'IVOIRE            | NETHERLANDS            | UNITED KINGDOM     |
| CROATIA                  | NORWAY                 | UNITED STATES      |
| CZECH REPUBLIC           | PARAGUAY               | VIETNAM            |
| DANMARK                  | PHILIPPINES            |                    |

Customs and Economic Union

EUROPEAN COMMUNITY (EC).

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

FOOD AND AGRICULTURAL ORGANISATION OF THE UNITED NATIONS (FAO)  
INTERNATIONAL CHAMBER OF COMMERCE (ICC)

4. The following Research Group of the University of Hamburg (Germany) was represented during the discussion on agenda item III.C.1 by observers :

RESEARCH GROUP FOR BIOLOGICAL ARMS CONTROL

5. The list of participants in the meeting is reproduced in Annex G.

I. AGENDA  
(Doc. NR0693E1i)

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

| Item     | Country       | Language       |
|----------|---------------|----------------|
| III.A.1  | FAO           | English        |
|          | WTO           | English        |
| III.A.2  | Colombia      | English/French |
| III.A.11 | United States | English        |
| III.B.8  | Japan         | English        |

7. The Delegate of Paraguay informed the Sub-Committee of the request of her Administration to withdraw Item III.A.3 from the Agenda since her Administration had not yet been able to submit additional information with regard to technical characteristics and objective criteria to differentiate certified organic cane sugar from traditional sugar. She stated that her Administration had asked that the matter would be adjourned *sine die* so that the Sub-Committee could revisit the request for an amendment to the Nomenclature for a separate provision for certified organic cane sugar at the moment that her Administration would be able to provide the required analysis. Given the fact that already a working document NR0708E1a had been prepared for this question and considering the comments made by Mr. WIND, Deputy Director, Tariff and Trade Affairs, in this respect, the Sub-Committee decided not to delete the issue from the Agenda, but to give consideration to the matter under Agenda Item III.A.3 (see Annex C/3 to this Report).

8. At the request of the Delegate of Japan, Agenda Item III.B.8, for which the Japanese Administration had presented a non-paper, would be dealt with before Agenda Item III.A.11.

9. Finally, several delegates drew the Secretariat's attention to certain technical problems that they had encountered when downloading working document from the Member's website.

The Deputy Director asked the administrations to inform the Secretariat of all possible problems in this respect.

10. Following these deliberations, the Review Sub-Committee adopted the Agenda, which is reproduced in Annex A to this Report. This Annex also serves as the Table of Contents.

## II. QUESTIONS EXAMINED BY THE REVIEW SUB-COMMITTEE

11. 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

12. The Deputy Director apologized for the late publication of Doc. NR0700F1a which was due to translation problems.

## SECRETARIAT STAFF CHANGES

13. Mr. Antoine MANGA MASSINA (Cameroon) introduced himself as the new Director, Tariff and Trade Affairs, with effect from 1 January 2008.
14. The Deputy Director informed the Sub-Committee that Mr. Raymond CASTIAUX (Belgium) and Mr. Seung-Hee CHUNG (Republic of Korea) had recently left the Secretariat and that he himself would be leaving at the end of November 2007. He also informed the Sub-Committee that meanwhile Mr. Alvaro FERNANDEZ ACEBES (Spain) and Mr. Tetsuya AKASAKI (Japan) had joined the Secretariat and that they would be dealing with chemical issues. Finally, he informed the Sub-Committee that Mrs. Kitjaluck SRINUCHSART (Thailand) had recently joined the Secretariat.

## DEPARTURE OF MR. I. WIND

### (DEPUTY DIRECTOR, TARIFF AND TRADE AFFAIRS DIRECTORATE)

15. The Sub-Committee was informed that Mr. Izaak WIND (Netherlands), Deputy Director, Tariff and Trade Affairs, would be leaving the Secretariat as from 1 December 2007, after 40 years of work in Customs of which 11 years within the WCO. On behalf of the Sub-

Committee and all the members, the Chairperson showed him his homage, thanked him for his infinite devotion, his valuable contributions in all the work, the committees, the seminars and other events concerning the HS while putting emphasis on his excellent work and offered him best wishes for his future activities.

16. Mr. WIND thanked de delegates for their collaboration and for the homage paid to him.

DEPARTURE OF MRS. O. RAKOTOBÉ  
(DELEGATE OF MADAGASCAR)

17. The Sub-Committee was also informed that Mrs. Olga RAKOTOBÉ, Delegate of Madagascar, after many years would soon be returning to her home administration. On behalf of the Sub-Committee, the Chairperson thanked Mrs. RAKOTOBÉ for her valuable contributions to the work of the Sub-Committee and wished her every success for the future.

18. Mrs. RAKOTOBÉ thanked the delegates and the members of the Secretariat for their cooperation and friendship, and mentioned that it had been a pleasure and honour to contribute to the work of the Sub-Committee. She wished the Review Sub-Committee and all its members great success in the future.

S. SANGARE  
Chairperson

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AGENDA FOR THE 36<sup>TH</sup> SESSION  
OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE

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(From 19 to 27 November 2007)

| <u>Agenda<br/>Item<br/>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 40 <sup>th</sup> 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, F/2         |
| 3.                                | Other   |                  |
| III.                              | <u>TECHNICAL QUESTIONS</u>  |                  |
| A.                                | <u>Further studies</u>  |                  |
| 1.                                | Possible amendments of the Nomenclature (Proposal by FAO)   | C/1, F/6         |
| 2.                                | Possible amendment of heading 17.01   | C/2, F/1         |
| 3.                                | Possible separate provision for certified organic cane sugar (Proposal by Paraguay)   | C/3              |
| 4.                                | Possible amendment of heading 24.03   | C/4, F/3         |
| 5.                                | Possible amendment to the Nomenclature to provide for bio-diesel  | C/5, F/19        |
| 6.                                | Possible amendment of Note 2 to Chapter 30 and of heading 30.02   | C/6, F/5         |
| 7.                                | Possible new Subheading Note 1 to Chapter 41  | C/7, F/4         |
| 8.                                | Possible amendment of the Nomenclature with respect to printer cartridges   | C/8              |

| <u>Agenda<br/>Item<br/>Number</u> | <u>Subject</u>  | <u>Documents</u> |
|-----------------------------------|---|------------------|
|                                   | 9. Possible amendment of Note 2 (a) to Chapter 94   | C/9, F/7         |
|                                   | 10. Possible amendment of Note 1 (m) Chapter 95   | C/10, F/8        |
|                                   | 11. Possible new Note 6 to Chapter 95   | C/11, F/10       |
| B.                                | <u>New questions</u>  |                  |
|                                   | 1. Possible amendment of heading 85.25 (Proposal by South Africa)                                       | D/1              |
|                                   | 2. Possible amendment of heading 87.02  | D/2              |
|                                   | 3. Possible amendment of Note 3 to Chapter 4  | D/3, F/11        |
|                                   | 4. Possible new heading 96.19 (Proposal by the US)  | D/4, F/12        |
|                                   | 5. Possible amendments to headings 20.08 and 20.09 (Proposal by the US)                                 | D/5, F/13        |
|                                   | 6. Possible amendment of Note 1 to Chapter 38   | D/6, F/14        |
|                                   | 7. Possible amendment of heading 85.17  | D/7, F/15        |
|                                   | 8. Possible amendment of subheading 9504.30   | D/8, F/9         |
| C.                                | <u>Additional list</u>  |                  |
|                                   | 1. Possible amendments of the Nomenclature (Proposal by the Research Group for biological Arms Control) | E/1              |
|                                   | 2. Possible amendment of heading 06.03 (Proposal by China)  | E/2, F/16        |
|                                   | 3. Possible amendment of heading 84.79 (Proposal by China)  | E/3, F/18        |
|                                   | 4. Possible amendment of Note 8 (b) to Chapter 85 (Proposal by Japan)                                   | E/4              |
|                                   | 5. Possible amendment of subheading 8523.40 (Proposal by Japan)   | E/5, F/17        |

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ANNEX B

GENERAL QUESTIONS

| Working Doc. | Subject  | Classification Opinions | E.N. amendments | Nomenclature amendments |
|--------------|--|-------------------------|-----------------|-------------------------|
| 1            | 2  | 3                       | 4               | 5                       |
| NR0695E1a    | Decisions taken by the Harmonized System Committee at its 40 <sup>th</sup> Session affecting the work of the Review Sub-Committee. |                         |                 |                         |

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

1. The Chairperson briefly outlined the decisions taken by the Harmonized System Committee at its 40<sup>th</sup> Session, as well as the outstanding questions and other questions which had a bearing on the work of the Review Sub-Committee.
2. The Sub-Committee took note of the decisions taken by the Committee.

\* \* \*



| 1   | 2   | 5                     |
|---|---|-----------------------|
| NR0691E1c<br>Annexes B/2<br>and F/8<br>(RSC/35)<br>NR0696E1a<br>NR0718E1a | Possible deletion of headings/subheadings with a small volume of trade. | <u>See Annex F/2.</u> |

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

1. The Sub-Committee considered the written proposals by Norway, the People's Republic of China and Brazil, proposing retention of certain headings and subheadings which were on the list of possible deletions based on low trade (Annex F/8 to Doc. NR0691E1c). Those administrations took the floor to further explain their retention requests and in some cases to specify more HS lines which they would like to be retained. In addition, Japan and Turkey made retention proposals from the floor during the meeting. Information regarding the above requests for retention can be found in Annex F/2 to this Report.
  
2. The Secretariat notified the Sub-Committee that during the intersession it would contact the UNSD to obtain updated trade data for the HS codes in the current list of deletions, including data for 2007 if possible, would perform a further analysis of the list based on the new data, and would prepare a new list for the next RSC meeting. That list would display the new trade data, and would indicate those categories which should be automatically removed because trade has already exceeded the threshold, and also those for which trade was increasing at a rate that suggested possibly exceeding the threshold by 2012.
  
3. As noted above, the lists of possible deletions, annotated to indicate comments received before and during the current (36<sup>th</sup>) Session, are set forth in Annex F/2 to this Report.

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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                       |
| NR0697E1a<br>NR0717E1a | Possible amendments of the Nomenclature (Proposal by FAO). |                         |                 | <u>See Annex F/6.</u>   |

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

1. At the outset of the discussion of the Agenda item, the Chairperson called the Sub-Committee's attention to the comments that had been received from the WTO with regard to the matter at hand, which had been distributed as a non-paper. The WTO indicated that, according to its preliminary analysis of the original FAO proposal (Annex F/7 to Doc. NR0691E1c (RSC/35 – Report)), the amendments would most probably have no impact on the legal scope of agriculture products as contained in Annex 1 of the WTO Agreement on Agriculture. However, although the proposal was generally related to splitting the existing HS subheadings to more detailed breakouts, the proposed changes may lead to a large amount of work in the future WTO transposition process given the complexity of the WTO Members' schedules of concessions on Goods. Some difficulties were to be foreseen when transposing concessions at a more detailed national tariff level. There might be some practical consequences on the implementation aspects of the FAO proposal, which would lead to a greater disaggregation for many products at the HS six-digit level. It was questionable, for example, whether all countries would be in a position to maintain separate statistics on curd depending on whether it was produced from buffalo milk, sheep milk or goat milk.
2. Several delegates confirmed that their administrations had similar concerns. They stated that the substantial volume of the amendments proposed was likely to create problems with their implementation and would have a significant impact on the statistics of both international trade and domestic production, WTO negotiations and various HS-based instruments. Considerable reprogramming of databases would be required and more

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

detailed technical knowledge of agricultural products by Customs officers would be needed. They felt that the Sub-Committee should endeavour to reduce this impact when examining the proposal.

3. With regard to the proposed insertion of separate subheadings for products with a high volume of domestic production one delegate wondered whether this justification would qualify as a valid derogation of the basic volume-of-trade principle for the creation of subheadings. She reminded that the HS was an international trade nomenclature and questioned whether the volume of domestic production was a relevant consideration in the context of the matter at hand.
4. The FAO Observer emphasised that the proposal was intended to address specific problems in monitoring the situation with the supply and use of foodstuffs. Accurate and consistent classification of such items was an important prerequisite to gathering accurate and reliable statistics. He indicated that the FAO had been trying to preserve the current structure of the HS as much as possible and had reviewed and simplified its original proposal prioritizing amendments which were of particular importance. However, if any of the proposed amendments created problems for administrations, the FAO would be prepared to give further consideration to its proposal with a view to finding a solution.
5. Other delegates submitted that some of the products for which separate subheadings were sought in the FAO proposal were already provided for separately in certain national or regional nomenclatures. They suggested that a detailed and comprehensive examination of the FAO proposal be carried out.
6. The Delegate of Brazil drew the Sub-Committee's attention to his administration's comments in Doc. NR0717E1a, which were based on the original proposal by the FAO, and pointed out that they remained valid only inasmuch as they related to the revised FAO proposal.
7. In addition to these comments by Brazil, the following observations were submitted during the discussion of the actual texts of the revised FAO proposal :

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

Heading 01.01

8. The structured nomenclature of this heading should include three one-dash subheadings, which should read : “Horses”, “Asses (*Equus asininos*)” and “Other”. There was no need to further subdivide the “Other” category.

Heading 01.02

9. The heading text should read “Live bovine animals (including buffalo)”, which would align it on the text of heading 41.01.

Subheading 0102.10

10. It would be worthwhile to introduce separate subheadings for beef and dairy animals as it had been originally proposed by the FAO.
11. The terms “Cattle” and “Buffalo” should be replaced with “Animals of the genus *Bos*” and “Buffalo of the genus *Bubalus*”, respectively. The term “buffalo” having the same form in plural and singular, references to this animal in this subheading and other HS texts should read “buffalo”.
12. However, the FAO Observer responded to the proposal to restrict the scope of subheading 0102.2 to buffalo of the genus *Bubalus* by stating that the intention was to cover in the new subheading 0102.2 all varieties of buffalo.

New subheadings 0105.13 to 0105.15

13. It was indicated that the residual subheading 0105.19 would need to be deleted as the insertion of new subheadings would result in the exhaustive structured nomenclature leaving subheading 0105.19 empty.

New subheading 0106.13

14. The subheading text should read “Camels and other camelids”.

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

New subheading 0301.20

15. "Ova" might not belong to heading 03.01 and should most probably be classified in heading 05.11. The French language equivalent of this term would need to be checked.

Subheading 0302.12

16. Several delegates had strong reservations with regard to the introduction of separate subheadings for products obtained from capture fisheries and those from aquaculture indicating that it would be very difficult to distinguish between the two categories of products without laboratory analysis. It was even more complex where mixed consignments were concerned where even laboratory analysis were not a sufficiently reliable means of product identification. They were thus concerned with an impact that the proposed amendment would have in terms of trade facilitation.
17. The FAO Observer pointed out that the volume of trade in farmed products, in particular salmonoids and shrimps, was very important. He explained that it was possible to determine the origin of fish and crustaceans on the basis of, for example, the content of antibiotics in them.
18. Another delegate indicated that his administration was in favour of the proposed amendment. The fact that the distinction between products of farmed and wild origin required a laboratory analysis would not *per se* be a reason to reject the amendment.

Subheadings 0302.40 to 0302.70

19. It would be advisable to define the scope of subheadings 0302.4 and 0302.5 in a legal Note.

Subheadings 0304.1 to 0304.29

20. The problem of a possible overlap and confusion between freshwater fish and Salmonidae would need to be addressed.

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

New subheadings 0305.43 and 0305.44.

21. Subheading 0305.44 may need to be amended to read “Other”.

New subheadings 0305.52 to 0305.55

22. Subheading 0305.55 should read “Fish heads, tails and maws”. However, “fish heads” were mentioned as an included category in the Explanatory Note to heading 05.11.

Headings 03.06 and 03.07

23. A question was raised as to whether the inclusion of the term “smoked” reflected present classification practices by administrations. If there was agreement in this regard, the corresponding Explanatory Notes would need to be amended to include references to smoked products. Given that the smoking process is not mentioned in the current text of either of the two headings, the amendment may imply a transfer of products from Chapter 16.
24. The FAO Observer expressed his flexibility as far as the introduction of this term was concerned indicating that the intention was merely to group all crustaceans and all molluscs in headings 03.06 and 03.07, respectively, to the extent possible.

Subheading 0307.10

25. It was noted that the French version of subheadings 0307.11 to 0307.13 should be rectified as the term “huître” was a feminine noun.

Headings 04.01 to 04.06

26. Several delegates expressed doubts as to the benefits of introducing a distinction based on the origin of milk in Chapter 4 and were concerned with the complexity of the structured nomenclature that the proposed amendments would bring about. Nearly all trade in cheese concerned products obtained from cow’s milk, with very little coming from other

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

milk sources. A question was raised as to how cheeses obtained from mixed milks (e.g., bovine and ovine milk) would be classified under the proposed new structured nomenclature.

Heading 04.07

27. As there was a potential overlap between subheadings 0407.10 and 0407.20, it was suggested that the text of the former subheading should read "Fertilized eggs" and that of the latter "Other, of hen, fresh".

CHAPTER 5

28. It was proposed that the Sub-Committee consider a possibility of providing separately for "dairy bovine semen" and "beef bovine semen".

Subheading 0703.10

29. The FAO withdrew the proposed amendment for this subheading.

Subheading 0713.90

30. Subheadings 0713.91 and 0713.92 referred to Bambara beans and Cow peas, which belonged to the genus *Vigna* and were currently covered by subheading 0713.3 while Lupines would fall in heading 12.14 (Explanatory Note to heading 12.14). Moreover, it was noted that the Latin names were only used in the French version of subheadings 0713.91 to 0713.94. It was suggested that these names be added to the English version too.

New subheadings 0714.30 to 0714.50

31. Both "taro" and "yautia", which were different plants in terms of their botanical classification, were followed by the same common name synonym "cocoyam". Both products were known under various common synonyms and yautia was even called "new cocoyam". To clarify the scope of the two subheadings, it was proposed that genus names ("*Colocasia* spp." for taro and "*Xanthosoma* spp." for yautia) be inserted in the subheading text.

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

Heading 08.03

32. Since plantains were a variety of bananas, it was proposed that subheading 0803.10 should read “Plantains” and 0803.90 – “Other”.

New subheading 0809.50

33. Sour cherries should be included with other fresh cherries of present subheading 0809.20. The FAO Observer pointed out that introducing a two-dash subheading for this product under the current subheading 0809.20 would be an acceptable alternative. The insertion of the Latin name (*Prunus cerasus*) was proposed.

New subheadings 0810.70 and 0810.80

34. Since cashew apples were almost never traded in a fresh state, the question was raised as to whether it was appropriate to introduce a separate subheading in heading 08.10, which provided for fresh fruit.

CHAPTER 9

35. Providing separately for “raw” versus “processed” spices might lead to classification difficulties in the future due to the ambiguity of both terms. Replacing the term “processed” with the term “other” may be considered as an alternative solution. The Secretariat was instructed to look into various options during the intersession.

CHAPTER 10

36. Although the term “seed” was already used in the current HS texts, e.g., in headings 07.01 or 10.05, its scope was not entirely clear.
37. Furthermore, the Sub-Committee took note of the inconsistent use of the singular and the plural forms of the term “seed” throughout Chapter 12 and agreed to examine this issue at its next session as a separate Agenda item.

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

New subheadings 1207.60 to 1207.80

38. Doubts were expressed as to whether “palm nuts and kernels” and “oil palm fruit” were indeed different products. The Explanatory Notes to headings 15.11 and 15.13 suggested that palm kernels and fruit of palm oil were obtained from the same plants.
39. The FAO was invited to clarify what was the intended scope of the proposed new subheading 1207.80. The Secretariat was instructed to research the use of the terms “palme” and “palmiste” in the French version of the HS and to inform the Sub-Committee of its findings.
40. Given that “palm nuts and kernels” and “safflower seeds” had been provided for separately in HS 2002 version under subheadings 1207.10 and 1207.60, respectively, they should be re-introduced under the same numbers.

New subheadings 1214.20 to 1214.60

41. Referring to maize, clover, rye grass and sorghum as to products “for forage and silage” would imply their end use. It might be difficult to distinguish these products from those not for forage and silage, e.g., in Chapters 6, 7 (corn), 10 or 23.
42. “Corn” was a commonly used term for maize and should be inserted in the text in parentheses.
43. The FAO Observer indicated that the Secretariat’s proposal in paragraph 33 of the working document was acceptable.

Heading 15.02

44. Concerns were expressed as to the difficulties in distinguishing between fats obtained from different animals.
45. Since tallow belonged to heading 15.02, it was suggested that it be subdivided in subheadings for “Tallow” and “Other”. The text of the heading should refer to “bovine animals (including buffalo)”, which would align it on the text of heading 41.01 and allow the C/1/8.

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

introduction of a separate subheading for buffalo fat as proposed by the FAO. Subheading 1502.90 would then need to be deleted as it would be empty.

46. The Sub-Committee's attention was drawn to a possible misalignment between the French and the English texts of the Explanatory Note to heading 15.02. In particular, the French term "suif" appeared in the first sentence of the Note while the English term "tallow" did not. It was agreed that views of the HS Committee should be sought as to whether any action would need to be taken to rectify the situation.

Subheading 1604.20.

47. It was proposed to replace the term "hamburgers" in subheading 1604.22 with the expression "and similar forms".

48. Fish sauces not being covered in Chapter 16, it was felt that the proposed new subheading 1604.24 should be deleted.

49. The FAO Observer proposed that a new subheading 2103.40 for these products be inserted in heading 21.03.

Subheading 2301.10.

50. Serious reservations were expressed with regard to the proposed introduction of separate subheadings for different kinds of meals. It was submitted that the proposed amendments were likely to create major problems for Customs as it would be necessary to distinguish between a number of products on the basis of their origin, which would most certainly have an impact in terms of trade facilitation.

Heading 52.01.

51. The FAO withdrew the proposed amendment for this heading.

52. In conclusion, considering the fact that the FAO had reviewed its original proposal and that the new version had been made available shortly before this Sub-Committee session, it

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

was agreed that the entire text would be placed in square brackets and revisited at the next session.

53. The text of the FAO proposal, put in square brackets, is reproduced in Annex F/6 to this Report.

\* \* \*

| 1                      | 2                                    | 5                     |
|------------------------|--------------------------------------|-----------------------|
| NR0698E1a<br>NR0716E1a | Possible amendment of heading 17.01. | <u>See Annex F/1.</u> |

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

1. After an extensive examination of the text of the new Subheading Note 2 to Chapter 17, the Sub-Committee agreed to amend the draft text presented in the Annex to Doc. NR0698B1a as follows :
  - (i) The term “non-crystallised” was deleted. Bearing in mind that the product did contain microcrystals it was considered that the inclusion of this term would result in a text that might lack consistency and could therefore be misconstrued;
  - (ii) The reference to reducing sugar content was deleted. It was felt that it would be more appropriate to include the information on the reducing sugar content in the pertinent Explanatory Note; and
  - (iii) The expression “obtained without centrifugation” was maintained and the following new last sentence was added : “The product is composed of only natural anhydrous microcrystals, of irregular shape, not visible to the naked eye, which are surrounded by residues of molasses and other constituents of sugar cane.” The Sub-Committee agreed that the inclusion of this information was necessary to further clarify the characteristics of the product and thus the scope of the new subheading.
  
2. With regard to the upper level of sucrose to be used in the new Subheading Note views in the Committee were divided.
  
3. Some delegates were in favour of using the 85° threshold for sucrose recalling that the original proposal by Colombia had dealt with a specific product by the name “panela”, for which a separate subheading was sought. The laboratory analysis, which had been conducted so far, confirmed that the sucrose content in all varieties of panela was within the range from 69° to 85°. Increasing the upper limit for sucrose in panela may have undesired consequences in that it may change the scope of the new subheading 1701.13, which would then cover cane sugar other than panela, such as brown cane sugar.

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

4. Other delegates, however, recalled that the Sub-Committee had previously agreed that the new subheading 1701.13 should cover not only panela but all types of non-centrifugal sugar produced and traded world-wide. It was on this assumption that additional laboratory research had been carried out during the intersession. The Delegate of Japan reiterated her administration's conclusions presented in Doc. NR0716E1a and suggested that the upper sucrose limit should be less than 93°. Another delegate pointed out that the Customs laboratory of his country had proposed using the 92° value for sucrose.
5. Given that the results of the analysis by laboratories diverged, which suggested a possible lack of uniformity in how laboratories were using analysis techniques, several delegates were of the opinion that views of the Scientific Sub-Committee should be sought as to the laboratory methods to be utilised for determining the sucrose content in cane sugar as well as to the value of sucrose to be used to distinguish between the cane sugar to be covered in the new subheading 1701.13 and other kinds of cane sugar.
6. However, given that there was only one Scientific Sub-Committee session outstanding before the end of the Fourth Review Cycle, for practical reasons it was agreed not to forward the matter to the Scientific Sub-Committee.
7. To give administrations more time to consider the issue of the sucrose content threshold to be used, it was decided to put the three values proposed in square brackets and to continue the examination of the matter at the Sub-Committee's next session.
8. The text agreed upon by the Sub-Committee, with some of its parts in square brackets, is reproduced in Annex F/1 to this Report.

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| 1         | 2  |
|-----------|--|
| NR0708E1a | Possible separate provision for certified organic cane sugar (Proposal by Paraguay). |

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

1. The Delegate of Paraguay informed the Sub-Committee that it had not been possible to obtain the results of the laboratory analysis of the certified organic cane sugar during the intersession. That being the case, she requested the Sub-Committee that the discussion of this Agenda item be suspended *sine die*. She emphasised however that her administration's intention was not to withdraw its proposal altogether, but to defer its examination by the Sub-Committee until the moment when the laboratory results were available.
2. Following a brief discussion, it was agreed that the proposal by Paraguay should neither be examined at this session nor be entered on the Agenda of subsequent Sub-Committee sessions, unless otherwise requested by Paraguay.
3. The Delegate of Paraguay expressed her gratitude to the Sub-Committee for the work accomplished thus far as well as for its flexibility and understanding of the problems inherent in the examination of the matter.

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| 1         | 2                                    | 5                     |
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| NR0699E1a | Possible amendment of heading 24.03. | <u>See Annex F/3.</u> |

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

1. After the Chairperson had introduced the working document, the Delegate of Japan opened the discussions by describing her Administration's concerns about this issue. She considered that the distinction between the various types of water pipe tobacco should be clearly established before any decision could be taken about the legal text to be adopted.
2. Despite the absence of the Egyptian Delegation, the Chairperson asked the Sub-Committee whether the information provided by the Egyptian Administration in Annex I to the working document was sufficient to enable a decision to be taken.
3. The Delegate of Canada also expressed his concerns about the new proposed text and the consequences of maintaining, or deleting the text in square brackets; he proposed that another subheading, 2403.12, be created for water pipe tobacco.
4. The Delegate of Brazil put forward a suggestion that a fuller product description be provided, so that it would also cover water pipe tobacco containing sweetening agents other than molasses and sugar, and proposed : (a) a new wording for the legal text, namely "water pipe tobacco, **put up for retail sale**", (b) the deletion of the text in square brackets and (c) the creation of a Subheading Explanatory Note to provide a fuller, and more accurate description of all the water pipe tobaccos.
5. However, the EC Delegate expressed his concern that the discussions appeared to be moving towards the adoption of a text which departed from the initial proposal by the Egyptian Delegation for a separate subheading to cover "Meassell" type water pipe tobacco only. He proposed the addition of the words "whether or not" and a new wording for the legal text : "Water pipe tobacco, **whether or not** containing molasses or sugar, and whether or not containing other substances". Under this alternative other types of water pipe tobacco, not containing molasses (such as "Tumbak"), could then be covered by the subheading. Finally, he proposed that this legal text be accompanied by a Subheading Note rather than an Explanatory Note.

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

6. His suggestion was supported by the Delegate of Morocco, who proposed that the word “fruit” be inserted in the subheading text.
7. The Delegate of the Democratic Republic of the Congo sought clarifications from the Brazilian Delegation, and asked whether the Brazilian proposal was based primarily on quantitative criteria. He then suggested that the term “sweetening agents” be added.
8. The Delegate of Brazil said that his suggestion was based on a desire to facilitate the work of the Customs authorities, which frequently encountered products of this kind. He considered that the wording on packets of water pipe tobacco could be reflected by including in the text the words “put up for retail sale”, which would make this type of tobacco even easier to identify. However, he did not indicate exactly where these words would figure in the subheading text.
9. The Deputy Director reminded the Sub-Committee of the text which the Egyptian Administration had proposed, and said that for the products at issue, the packets did not refer specifically to water pipe tobacco - the word “tobacco” did not even figure.
10. After hearing the views of a number of delegates, the Sub-Committee decided to adopt the proposed text which came closest to meeting the Egyptian Administration’s request, i.e., the one proposed by the EC Delegate, to be accompanied by a Subheading Note. The text as revised now reads as follows : **“2403.11 – Water pipe tobacco, specified in Subheading Note 1 to this Chapter”**. So, the words in square brackets in the proposed text at Annex II to Doc. NR0699E1a must be deleted, and a Subheading Note will be drafted.
11. The US Delegate said it was important to emphasize that the products at issue were actually tobaccos, and not tobacco substitutes. He also indicated that the glycerol content was an aspect worth mentioning in the Subheading Note, given that when water pipe tobacco was smoked, this caused chemical reactions which made the glycerine toxic.
12. Where the other questions raised during the discussions were concerned, the Deputy Director said that the Secretariat would prepare a new working document for the next session, which would include the new text which had been adopted. For the moment, the Secretariat did not yet have a clear idea of how the Subheading Note would read, but as C/4/2.

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

soon as a text had been drafted it would be forwarded to the Egyptian Administration to check whether it met the latter's needs.

13. The Sub-Committee decided to adopt the reworked text, and agreed to re-examine the content of the new Subheading Note at its next session.
14. The text adopted by the Sub-Committee is reproduced at Annex F/3 to this Report.

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| 1         | 2  | 5                      |
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| NR0700E1a | Possible amendment to the Nomenclature to provide for biodiesel. | <u>See Annex F/19.</u> |

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

1. Opening the discussion, the Delegate of Brazil proposed to separate the two issues and to focus at the current session on the possible amendment of the Nomenclature for biodiesel only, and to leave the possible amendment of the Nomenclature for bioethanol and mixtures of ethyl alcohol or methanol (methyl alcohol) with gasoline to the next session of the Sub-Committee in May 2008, for the reason that the HS Committee had not yet decided on the classification of the mixtures of ethyl alcohol with gasoline as requested by the Sub-Committee at its previous session.
2. The Sub-Committee agreed to divide the examination in two parts, and to deal with (A) biodiesel at the present session and to postpone the discussion on the possible amendment of the Nomenclature for (B) alcohol based fuels to the next session. With regard to the ethanol fuel mixtures the US Delegate called upon the Administrations to consider during the intersession whether they really wanted to create separate provisions within Chapter 22 for these alcohol based fuel mixtures. The nature of the ethanol fuel mixtures was rather different from the products of Chapter 22; all the more for the methanol fuel mixtures.
3. In discussing the working basis for a possible amendment to the Nomenclature for biodiesel, the Delegate of Brazil explained the background of the proposal, which dated back to 2004 when Brazil had asked the Secretariat's view on the classification of a certain type of biodiesel. The classification of the product had been examined by the Scientific Sub-Committee and the Committee, and its 36<sup>th</sup> session (September 2005) the Committee had adopted Classification Opinion 3824.90/14 for the product and had approved the insertion of a new Item (48) for this so-called "biodiesel" in Part (B) of the Explanatory Note to heading 38.24. He further explained that the need to separately identify this product in the Nomenclature in a specific subheading, rather than in a residual subheading, had caused the Administration of Brazil to submit in April 2006 the proposal to amend the Nomenclature to provide for biofuels. The Delegate of Brazil acknowledged that the latest Brazilian proposal differed from the initial proposal, but his administration considered the term biofuels in the first proposal to be vague and the latest proposal focused on biodiesel. He reminded

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

the Sub-Committee of the fact that at the time of presenting the proposal the 2<sup>nd</sup> generation biodiesel had not yet been taken into consideration by the Sub-Committee.

4. The Delegate of Brazil continued to state that his Administration was in favour of Proposal I (paragraph 29 of the working document NR0700E1a). However he made clear that his administration could not agree with a reference to a standard, e.g., ASTM D 6751 or EN 14214, in the legal text.
5. The Delegate of Japan, on the other hand, expressed a preference for Proposal III (paragraphs 40 to 43 of the working document NR0700E1a). Her administration was also not in favour of a reference to a standard, e.g., ASTM D 6751 or EN 14214, in the legal text. She explained that these standards could not be used to identify this type of products, but were rather to determine the quality of the products. She further stated that the mono-alkyl esters of fatty-acids could also be used in the production of shampoos and conditioners and her administration questioned how the products could be identified as fuel for diesel engines when presented to Customs at the border.
6. The Delegate of Canada stated that his administration opted for Proposal II (paragraph 36 of the working document NR0700E1a). However, if there would not be support for this proposal, his administration would have a preference for Proposal III.
7. The Delegate of Malaysia stated that his administration was satisfied with the current classification of biodiesel in heading 38.24, but was open to various options. As one of the world's largest producers of palm oil the main concern of Malaysia was in the field palm biodiesel. He mentioned that his country had its own organization for biodiesel, the Malaysian Palm Oil Board. This organization had defined biodiesel as methyl esters of long chain fatty-acids derived from vegetable oils. This definition was for 100 % pure biodiesel (B100). For the quality of the biodiesel in Malaysia he mentioned the Malaysian Standard for petroleum diesel MS123, 1993, while the quality of palm biodiesel would be that of the European standard for biodiesel, i.e., EN 14214. Regarding the proposal to define biodiesel for the HS, he expressed his administration's concern to the use of the ASTM D 6751 or EN 14214 standard. He continued to state that his administration had also concern in respect of the defined use, i.e., fuel for diesel or semi-diesel engines. Biodiesel was not necessarily for use as engine fuel only but could be used for many other purposes, e.g., in the production of carotenes, provitamins and vitamins. His administration could not support C/5/2.

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

and end-use requirement in the definition. Finally, he stated that his administration could not support the classification of biodiesel in Chapter 27. His administration had a preference for the Brazilian Proposal I to provide for biodiesel in heading 38.23.

8. The US Delegate emphasized that all petroleum products were classified in Chapter 27, and that mixtures of biodiesel with more than 70% petroleum oils were also classified in Chapter 27. If the amount of petroleum oils would be less than 70% the use of these mixtures would be more or less the same, i.e., use as fuel or heating oils. In this regard his administration could support Proposal II to classify these mixtures in the future in Chapter 27. If however the Sub-Committee would not be in favour of this proposal, his administration alternatively would consider Proposal III, though this proposal had two options. In this respect he mentioned that his administration was in favour of creating a new heading instead of the creation of new subheadings in the current heading 38.23.
9. The EC Delegate stated that the EC did not hold a view regarding a preference for one of the three proposals; each one had its advantages and disadvantages. It seemed logic to group all fuels in Chapter 27, but the European industry seemed reserved to the idea and had shown some reluctance. So far the reactions were that Chapter 27 should retain its own specific character and to group the mixtures with larger amounts of biodiesel outside Chapter 27. He mentioned that the reason for this reluctance might be related to the taxation of the products of Chapter 27. For the moment the EC suggested not to discard any of the proposals, and to work first on a definition of the product to be identified in the HS, e.g., only 1<sup>st</sup> generation or also 2<sup>nd</sup> generation biodiesel. He also questioned whether there was a need to make reference to a standard. He informed the Sub-Committee that the EC had not come to a conclusion yet and was open for all options.
10. After two more delegates had expressed their views the Chair provisionally concluded that there seemed to be a basis in the Sub-Committee to continue the discussion on the basis of Proposal III. Within this proposal there were two options, either to include biodiesel in current heading 38.23 or to create a new separate heading 38.26 for these products. The views of the Sub-Committee in this respect were divided.
11. With regard to standards, the Delegate of Brazil informed the Sub-Committee of certain international initiatives for biodiesel standards, like APAC and the International Biofuels Forum (IBF). The members of the IBF were Brazil, China, the European Commission, India,

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

South Africa and the United States. Within IBF there was a Working Group on Standards and Codes, which was to propose guidelines, principles and a road map for the development of internationally accepted standards and codes. The present standards ASTM and CEN/EN as well as the Brazilian Standard showed significant differences as regards feedstock, and they were not real universal standards. At the moment there was no universal standard like an ISO-standard. Further to this he suggested to limit the proposal to 'ester biodiesel' which would clearly indicate that it concerned 1<sup>st</sup> generation biodiesel, and leave the 2<sup>nd</sup> generation biodiesel for the future. Focussing on the definition of the product to be identified, a few other delegates also suggested to concentrate on the 1<sup>st</sup> generation biodiesel.

12. In this respect the Delegate of Canada stated that his administration could agree not to refer to the proposed norms or standards. With respect to the 2<sup>nd</sup> generation biodiesel however, he noted that despite the extensive reference to the production methods of these products described in the working document, the reference to the 2<sup>nd</sup> generation biodiesel in the definition which was provided by the Secretariat was simply a reference to 'biodiesel being obtained from waste materials of biological origin. The processes described in the working document did not indicate that these processes were restricted to simply waste materials of biological origin. He stated that at present he could not offer consensus on the limitation of the proposal to the 1<sup>st</sup> generation biodiesel. In the case the 2<sup>nd</sup> generation biodiesel were to be considered he suggested to modify the definition for biodiesel and to delete the words 'from waste materials of biological origin' and substitute the words 'from non-petroleum renewable resources.
  
13. Working on the basis of Proposal III several comments were made to amend the definition of the products to be covered. It was agreed that the text of Proposal III (paragraph 43 of working document NR0700E1a) would be placed in square brackets and revisited at the next session. To accommodate the various concerns expressed by the Sub-Committee several parts were placed in square brackets and the reference to the standards was deleted. To overcome the problems of a possible end-use provision, the Delegate of Morocco suggested referring to "fuel of a kind used for". Alternatively it was suggested not to refer to fuel at all because the products could also be used for other purposes. By way of example the description of the product could read "fatty-acids of mono-alkyl esters", as stated by the Delegate of Japan.

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

14. The text of the proposal, put in square brackets, is reproduced in Annex F/19 to this Report.

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| 1         | 2   | 5                     |
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| NR0701E1a | Possible amendment of Note 2 to Chapter 30 and heading 30.02. | <u>See Annex F/5.</u> |

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

1. Opening the discussion, the Delegate of Switzerland said that, with the proposed wording in option 1, the provisions of Chapter 30 would be more in line with new technology. He, therefore, suggested that the Sub-Committee should discuss the issue on the basis of that option.
2. Several delegates agreed with his proposal and the Sub-Committee decided to discuss the issue on the basis of Option 1.
3. After a lengthy discussion, however, the US Delegate drew the Sub-Committee's attention to the fact that the proposed amendment of heading 30.02 in Option 2 better reflected the discussions and was more appropriate, though "and" should be replaced by "or" in the square bracketed text. He further pointed out that the first paragraph of proposed Note 2 to Chapter 30, as in Option 1, would no longer be needed, since it was merely a repetition of the new proposed text of heading 30.02. Several delegates agreed with his proposal.
4. The Chairperson then referred to the text of heading 30.02 based on Option 2. The Sub-Committee had no objection with regard to accepting this text.
5. As regards the second paragraph of the proposed Note 2 to Chapter 30 in Option 1, the Sub-Committee first agreed to delete the square brackets around "(other than goods ... or 35.07)" and ", which regulate ... and colony stimulating factors", respectively.
6. One delegate suggested putting a full-stop after the word "conjugates" with a view to simplifying the text of Note 2 to Chapter 30. He preferred to have the examples in the Explanatory Note as specific examples rather than putting them in the legal text.
7. This proposal was supported by several delegates. However, one delegate preferred to retain the above-mentioned examples in the proposed text of Note 2 to Chapter 30. Other

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

delegates proposed that the Sub-Committee should ask the Scientific Sub-Committee to give its view on the possible inclusion of the particular examples.

8. The Sub-Committee did not reach a consensus with respect to how to deal with the terms within square brackets (i.e., “the blood system” and “directly”) in the second paragraph of the proposed Note 2 to Chapter 30 in Option 1. Some delegates suggested that the Sub-Committee should submit these specific matters to the Scientific Sub-Committee for consideration as well.
9. Another delegate indicated that the scope of the term “the blood system” exceeded that of immunological response and he, therefore, proposed a new text (“which regulate or are involved in the regulation of immunological process”) in stead of the expression “which regulate immunological processes or are involved in the regulation of the blood [system], in the activation or deactivation of the immune response [directly]” in paragraph 2 of the proposed Note 2 to Chapter 30. Yet another delegate suggested a further option (“which affect the immunological processes”) as an alternative.
10. After a further exchange of views, the Sub-Committee agreed to send the draft texts to the Scientific Sub-Committee for consideration and in particular, to ask them to examine :
  - (i) Which of the following options in the proposed text of Note 2 to Chapter 30 would be more appropriate :
    - (a) “which regulate immunological processes or are involved in the regulation of the blood [system], in the activation or deactivation of the immune response [directly]”;
    - (b) “which regulate or are involved in the regulation of immunological processes [directly]”; or
    - (c) “which affect the immunological processes [directly]”;
  - (ii) If above option (a) is preferable, whether the expression “the blood system” is a suitable expression within the context of the proposed text of Note 2 to Chapter 30; if not, what alternative expression would be appropriate;

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

- (iii) Whether to use the term “directly” in the proposed text of Note 2 to Chapter 30; and
  - (iv) Whether to include the phrase “interleukins, tumor necrosis factors (TNF), interferons (IFN), chemokines, growth factors (GF), neurotrophins, hematopoietins and colony stimulating factors (CSF)”, in the last part of its sentence of the proposed text of Note 2 to Chapter 30.
11. The text of the possible amendment to Note 2 to Chapter 30, including the texts in square brackets, is set out in Annex F/5 to this Report.

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| NR0702E1a | Possible new Subheading Note 1 to Chapter 41. | <u>See Annex F/4.</u> | <u>See Annex F/4.</u> |

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

1. After the introduction of the working document by the Chairperson, the EC Delegate expressed a preference for option 2 of the proposed amendments to the Nomenclature, i.e., to amend the text of subheading 4101.20. With regard to the possible amendment of the Subheading Explanatory Note to subheading 4101.20 he expressed his preference for the proposed descriptive text, instead of deleting the Subheading Explanatory Note to subheading 4101.20.
2. He continued to explain that more time was needed to consult with the European leather industry to obtain further information with regard to the question whether or not the hides and skins of adult animals, which met the weight criteria laid down in the text of subheading 4101.20, could withstand splitting operations.
3. Another delegate preferred option 2 of the proposed amendments to the Nomenclature. The amendment would simplify the Nomenclature since it would not require an additional Subheading Note to Chapter 41. Furthermore, this delegate was also in support of the draft revision of the Subheading Explanatory Note to subheading 4101.20, instead of simply deleting this Subheading Explanatory Note.
4. The Secretariat reminded the Sub-Committee of the ongoing discussion in the HS Committee with regard to the possible amendment of the Subheading Explanatory Note to subheading 4101.20. The HS Committee might well decide in March 2008 to an amendment of the Subheading Explanatory Note to subheading 4101.20 on the basis of the Article 8 procedure along the lines of the proposed descriptive text. Such an amendment would take away the need for a future Article 16 amendment of the Subheading Explanatory Note.
5. The Sub-Committee concluded the discussion by agreeing to place the text of option 2 of the proposed amendments to the Nomenclature, together with the draft revision of the descriptive text of the Subheading Explanatory Note to subheading 4101.20, in square

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

brackets and to continue the examination of the proposal at its next session, pending the outcome of discussions on the Subheading Explanatory Note in the Committee.

6. The text of the proposal, put in square brackets, is reproduced in Annex F/4 to this Report.

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| 1         | 2  |
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| NR0703E1a | Possible amendment to the Nomenclature with respect to printer cartridges. |

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

1. The Delegates from the United States and Japan stated that the time was not opportune for amending the HS with regard to printer cartridges since the kinds of ongoing litigation that caused the issue to be dropped from the agenda of the last review cycle presented similar concerns at the present.
2. Several other delegations took the floor to express their support for a specific provision for certain printer cartridges. The Delegate of Brazil expressed his administration's hope that the Sub-Committee's decision whether to create such a provision would be taken on the basis of a broad consensus and would not be thwarted by the resistance of a few administrations. The Delegate of Australia noted that in the view of her Administration, a discrete line for printer cartridges would in fact eliminate uncertainties which ongoing litigation presented, and that her Administration viewed simplification as a way of avoiding much future litigation. The EC Delegate also spoke in favour of such an amendment, while at the same time noting that the time remaining in the current review cycle is growing short and that there might not be sufficient opportunity to resolve all the concerns of some administrations.
3. During his interventions, the Delegate of Canada indicated that his Administration conceptually supported a separate provision for certain printer cartridges, viewing such a change as an opportunity to greatly simplify the classification of these products. However his administration also respected the views of those administrations who expressed concerns over ongoing litigation, and added that during discussions of the informal working group which drafted many of the 2007 HS amendments in the high-tech area there were unresolved differences of opinion as to how the products could best be treated. His Administration's concerns with the Secretariat's initial drafts related mostly to references to specific goods, in an industry in which designs were rapidly and continuously changing, possibly rendering those portions of the draft anachronistic by the time of its planned 2012 implementation.

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

4. The Deputy Director noted that the problem of insufficient time was raised during the last review cycle as the reason for dropping this issue and this would be merely repeating the process. He further said that although some indicated their preference for the *status quo*, in his view, *status quo* represented inconsistency and, consequently, uncertainty for traders. Considering the lack of consensus on this issue at this advanced date in the review cycle, the best procedure might be to report the status of this question directly to the Committee, including the views expressed, and leaving it to the Committee to decide what the next step should be. If the Committee wished the Subcommittee to continue developing a proposal that would provide separately for certain printer cartridges, the Secretariat would place the matter on the Agenda for consideration by Sub-Committee during its Spring 2008 Session, for consideration based on the current working paper and any other information received by the Secretariat during the intersession.
  
5. The Sub-Committee agreed to the Deputy Director's suggested procedure.

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| NR0704E1a | Possible amendment of Note 2 (a) to Chapter 94. | <u>See Annex F/7.</u> |

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

1. Opening the discussions, the US Delegate pointed out that the product at issue was a finished single wooden board which would normally fall in Chapter 44 except it was presented together with hardware or supports for mounting them to the wall and that the purpose of the proposed amendment was to clarify the classification of this article in Chapter 94 as shelved furniture. He explained that presently in certain furniture stores a bookcase and then a number of shelves presented with several small pins for fixing them into the bookcase could be purchased in separate elements. However, although such shelves presented with small pins should not be included in Chapter 94, the expression “fixing devices” might be misinterpreted to include those small pins. It was therefore necessary to make it clear that the devices presented with the boards must be supports for fixing the boards to the wall.
2. Several other delegates agreed with the US but preferred the Secretariat’s alternative text “presented with supports for fixing them to the wall”.
3. Another delegate’s proposal made after the discussions to use the text “including single shelves clearly designed to be fixed to the wall” was not supported, due to the difficulty with using the term “designed” in connection with a single board.
4. Yet, referring to the exemplar (iv) illustrated in paragraph 10 of the working document, another delegate believed that this article should fall in Chapter 94 even though it was not designed to be “hung”, to be “fixed to the wall” or to “stand one on the other”. Since it was designed to be fitted to another furniture, he wondered whether it could be appropriate to insert the term “to be fitted” in the introductory sentence of the second paragraph of present Note 2 (a) to Chapter 94. However, after the explanation given by the Deputy Director that first the question of whether this type of a product should be classified in Chapter 94 could be submitted to the HS Committee and then, if necessary, the proposed amendment could be studied in a later session, he said that he would not follow this matter.

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

5. Following this intervention, the Sub-Committee accepted the proposed amendment, duly supplemented with the text proposed by the US.
6. The text agreed is set out in Annex F/7 to this Report.

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| 1         | 2   | 5                     |
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| NR0705E1a | Possible amendment of Note 1 (m) to Chapter 95. | <u>See Annex F/8.</u> |

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

1. For all the reasons explained in the working document, the Sub-Committee agreed, by consensus, to delete the expression “separately presented” from the proposed texts but to keep the expression “whether or not” therein.
2. The texts agreed, subject to certain editorial modifications, are set out in Annex F/8 to this Report.

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| NR0706E1a | Possible new Note 6 to Chapter 95. | <u>See Annex F/10.</u> |

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

1. At the request of the Delegate of Japan, this agenda item was examined after Item III.B.8 concerning "Possible amendment of subheading 9504.30" (see also Annex D/8 to this Report).
2. Introducing the working document, the Chairperson informed the Sub-Committee that the US Administration had submitted a non-paper in connection with this agenda item.
3. The Delegate of Canada recalled that after classifying the "PlayStation 2" in heading 95.04, the HS Committee had amended Item (2) of the Explanatory Note to this heading (page XX-9504-1) to modernise the terminology used and to include video games having a self-contained screen therein. Referring to the concerns raised by the Secretariat in Doc. NR0712E1a concerning Agenda Item III.B.8, he agreed that the proposed new Note 6 to Chapter 95 be based on the present Item (2) of the Explanatory Note to heading 95.04 but that item was not a Subheading Explanatory Note and its provisions could not be considered related to any particular subheading of the heading. Taking into account the fact that the present subheading 9504.10 was amended as 2012 subheading 9504.50 with a new scope, the adoption of the proposed new Note 6 defining the scope of that subheading would result in a great alteration of the coverage of certain other subheadings under heading 95.04. Referring to the exemplar (3) (Aliens) given in paragraph 14 (b) and (c) of Doc. NR0706E1a, which probably prompted the Japanese Administration to submit its new proposal under Agenda Item III.B.8, the question before the Sub-Committee was whether or not the arcade type of video games operated by coins, banknotes, bank cards, tokens or by other means of payment should remain in the present subheading 9504.30 (or 2012 subheading 9504.60). Therefore, he said, it would be appropriate if the Sub-Committee consider whether paragraph (c) of the proposed new Note 6 to Chapter 95 should be kept therein or be deleted.
4. The US Delegate pointed out that the new Canadian suggestion regarding the deletion of paragraph (c) of the proposed new Note 6 could be considered at a later stage. She

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

explained that although her administration previously was in agreement with the proposed new Note 6, after considering the concerns expressed by the Secretariat, found it appropriate to submit the non-paper on the new US proposal for examination by the Sub-Committee. As regards the modifications suggested in the non-paper, she explained that :

- (i) The US did not support the Secretariat's view to merge paragraphs (b) and (c);
- (ii) In the introductory sentence, it would be more appropriate to use the term "covers" instead of "includes" to reflect the binding nature of the legal Note;
- (iii) In paragraphs (a) through (c), it would be better to use the expression "electronic games" instead of "video game consoles, etc." to define the expression "video game consoles and machines"; and
- (iv) In paragraph (c), the US did support the Secretariat's suggestions to reflect the new terminology regarding the payment methods.

5. Yet, the EC Delegate, while agreeing with the Secretariat's comments made in paragraph 18 of the working document, expressed the difficulty with the nature of the problem which the Sub-Committee was trying to solve. He felt that the proposed new Note 6 might be settling some problems on the one hand but introducing some new problems on the other. He still had some concerns about whether it was worthwhile to pursue this project, because subheading 9504.10 had already been provisionally amended as 9504.50 and any further clarification to this amendment could be duly introduced by further amending the relevant Explanatory Notes, emphasising that nowadays the manufacturers of video games were constantly introducing new products into the market.

6. The Chairperson appreciated the intervention by the EC and said that it would be interesting to follow the discussions, because some administration had already been reacted to the new proposals and to the Secretariats comments and expressed certain interests on the matter.

7. The Deputy Director explained, first as regards the Canadian comments, that, for the purposes of HS 2012, not only the text of subheading 9504.10, but also that of heading 95.04 had been provisionally amended to include "video game consoles and machines" and C/11/2.

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

therefore the proposed new Note 6 to Chapter 95 would have a bearing on all subheadings of heading 95.04. He continued that the original proposal had been made by the Australian Administration and the Sub-Committee had agreed to use the term “include” in the introductory sentence of the proposed new Note but this was changed in the new US proposal to the term “covers”. He pointed out that the question in front of the Sub-Committee was how to distinguish between the “video games” operated by coins, etc. means of payment and the “other games” operated by the same means of payment. The difficulty was with using the same terminology in a possible Chapter Note regarding “video games” of heading 95.04 which was already used in the text of a subheading of the same heading covering different articles. More specifically, he noted that, on the basis of the comments made by the Secretariat and administrations, at this stage the Sub-Committee seemed to be not ready to further discuss this issue at the present session. As the text before the Sub-committee was not answering to the question of which subheading should cover the “arcade type of video game machines”, he proposed that this question should be discussed further at the next session to find out what should be covered or not covered by HS 2012 subheading 9504.50.

8. The Delegate of Canada thanked the Secretariat for the clarification given and informed the Sub-Committee that his administration would draft a new proposal synthesising all the concerns expressed. He added that he would share that proposal with other interested administrations for their consideration and submit it to the Secretariat well in advance of the next session of the Sub-Committee.
9. The Delegate of Brazil agreed that the arcade type video game machines operated by payment methods should not be classified together with other types of vide game consoles and machines and that a clear distinction between the HS 2012 subheading 9504.50 and other subheadings of heading 95.04 should be established either by a Chapter Note or by a Subheading Note. He added, however, that he was not ready to discuss the new proposal submitted by the US in a non-paper.
10. Taking into account the opposition expressed by Brazil, the Sub-Committee agreed (i) to keep the original proposal given in the Annex to the working document, (ii) to place the new US proposal in square brackets as another option and (iii) to re-visit this question on the basis of further comments by Canada and any other administrations. The Secretariat was instructed to prepare a new document on this basis for examination by the Sub-Committee at its next session.

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

11. The two options placed in square brackets are reproduced in Annex F/10 to this Report.

\* \* \*

ANNEX D

NEW QUESTIONS

| Working Doc.       | Subject   | Classification Opinions | E.N. amendments | Nomenclature amendments |
|--------------------|---|-------------------------|-----------------|-------------------------|
| 1                  | 2   | 3                       | 4               | 5                       |
| NR0684E1a (RSC/35) | Possible amendment of heading 85.25 (Proposal by South Africa). |                         |                 |                         |

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

1. One delegate stated that in the proposal the word “broadcast” had been interpreted in its meaning as “program content”, while the HS used the word in its meaning as a particular technology for distributing the program content. Since “broadcast” in the HS referred to the transmission of information by means of wireless radio waves, the heading and corresponding Explanatory Note were, in fact, aligned and in his view there was no need for any of the modifications proposed in Doc. NR0684E1a. This view was supported by another delegate.
2. There being no disagreement expressed from the Sub-Committee, the Chair concluded that there was consensus not to amend the legal text or the Explanatory Notes.

\* \* \*



| 1         | 2  |
|-----------|--|
| NR0707E1a | Possible amendment of heading 87.02 (Proposal by Egypt). |

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

1. Several delegates felt that there was no need to amend heading 87.02 as proposed by Egypt, agreeing that the classification of motor vehicles of the type referred by Egypt should in principle be examined on a case-by-case basis.
2. The Delegate of Denmark pointed out that the issue raised by Egypt was most probably related to its national legislation concerning public transportation type of vehicles and, if so, could be addressed by Egypt by establishing national subdivisions in its Customs tariff nomenclature.
3. It was also noted that, on the basis of paragraph 23 of the working document, if necessary, Egypt might wish to submit any unresolved issues to the Secretariat for advice.
4. As such, the Sub-Committee preferred to maintain the *status quo* in respect of heading 87.02.

\* \* \*



| 1                                  | 2  | 5                      |
|------------------------------------|--|------------------------|
| NC1173E1a<br>(HSC/39)<br>NR0709E1a | Possible amendment of Note 3 to Chapter 4. | <u>See Annex F/11.</u> |

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

1. In opening the discussion of this Agenda item, the Delegate of Australia briefly summarised the proposal by her administration and invited the Sub-Committee to consider it.
2. The Delegate of Japan sought clarification whether products which did satisfy the requirements of Note 3 to Chapter 4 did not exist or were merely not traded internationally. She was concerned by a possible unintentional transfer of products to heading 04.06 from other headings and suggested that further study be conducted in this respect. The products currently defined by Note 3 to Chapter 4 were whey cheeses obtained by the concentration of whey, which corresponded to the description in item 2.1 (1) of the Codex Alimentarius Standard for whey cheese. She expressed her doubts as to whether whey cheeses obtained by coagulation of whey, which were referred to in item 2.1 (2) of the same Codex Standard, had to meet the criteria of Note 3 to Chapter 4 in order to be classified in heading 04.06 and proposed that the classification of such whey cheeses should be examined first.
3. One delegate, supported by another delegate, agreed that Note 3 to Chapter 4 was only applicable to whey cheeses obtained by concentration. She believed that whey cheeses obtained by processes other than concentration would fall in heading 04.06 even if they did not meet the criteria of Note 3 to Chapter 4. This was the case, for instance, with the Ricotta whey cheese, whose dry matter content was below the 70% threshold.
4. Furthermore, she indicated that since the Codex Standards may be reviewed in the future, caution should be exercised when applying such standards to define products in the HS.
5. Some delegates pointed out that, although their administrations were not against the proposal, more time was needed to consult the industry and to consider the problems raised by previous speakers. They were predominantly concerned with a possible transfer of products that the proposed amendment may entail.

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

6. One delegate informed the Sub-Committee that, according to the experts in his country, no products would be moved from heading 04.04 to heading 04.06. The only whey products that may potentially be transferred to heading 04.06 were whey gels. However, they would not meet the 5 % milk fat content requirement set in Note 3 to Chapter 4. He thus registered his administration's support of the Australian proposal.
7. Another delegate indicated that, according to her country's dairy industry, the current criteria were correct but the proposed amendment would also be acceptable.
8. The Sub-Committee agreed to place the proposed amendment in square brackets and to continue the examination at its next session. Administrations were invited to inform the Sub-Committee in case they had any specific concerns with regard to the Australian proposal.
9. The text of the proposed amendment in square brackets is reproduced in Annex F/11 to this Report.

\* \* \*

| 1         | 2  | 4                      | 5                      |
|-----------|--|------------------------|------------------------|
| NR0710E1a | Possible new heading 96.19 (Proposal by the US). | <u>See Annex F/12.</u> | <u>See Annex F/12.</u> |

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

1. Several delegations supported the creation of a single new heading for sanitary towels and tampons, napkins and napkin liners for babies and similar sanitary articles. However, with regard to the location of this new heading the opinions in the Sub-Committee were divided. In this respect the US Delegate explained that the current classification of the products at issue varied between the Chapters 39, 48 and Section XI. For this reason his Administration had opted for a new separate heading within Chapter 96.
  
2. Regarding the Secretariat's comments in the working document NR0710E1a, the US Delegate stated that his administration agreed to amend the text of the proposed exclusion Note 1 (q) to Chapter 48 as suggested by the Secretariat, i.e., to split the current exclusion Note 1 (p) to Chapter 48 into two separate exclusions for (i) the articles of Chapter 95 (new exclusion Note 1 (p) to Chapter 48) and (ii) the articles of Chapter 96 (new exclusion Note 1 (q) to Chapter 48). He continued to state that with regard to the text for exclusion Note 1 (u) to Section XI his Administration could accept the comprehensive text as suggested in paragraph 11 of the working document NR0710E1a if the Sub-Committee so wished.
  
3. On the subject of the Secretariat's proposed text for a possible exclusion in the Explanatory Note to heading 56.03, the US Delegate pointed out that the proposal to create a separate heading for the hygiene absorbent products covered a category of finished articles. In view of the fact that heading 56.03 would not cover finished articles he opined that there would not be a need for the proposed exclusion note in the Explanatory Note to heading 56.03. His administration could however agree to the classification of semi-finished articles in the new heading 96.19. He further stated that his administration could accept an exclusion note in the Explanatory Note to heading 63.07 as suggested in paragraph 14 of the working document.
  
4. The EC Delegate informed the Sub-Committee that the EC had received a similar request from the European industry to group this kind of products in a single heading. He pointed out that the proposal would affect the classification principle of these products, since

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

the products usually consisted of different materials and the current classification was often governed by the principle of GIR 3 (b), i.e., classification of the products on the basis of the material which gives them their essential character. He continued to state that, given the fact that today's classification of the majority of the products would be based on textile material, his Administration felt a preference to locate the new heading within Section XI. He further stated that more time was needed to study the consequences of the proposal vis-à-vis the agreements on textiles.

5. The EC Delegate further pointed out that if the proposal were to be followed there would be a need for an exclusion note in the Explanatory Note to heading 30.05 similar to the proposed new exclusion (k) in the Explanatory Note to heading 56.01.
6. Regarding the consequential transfer of products affected by this proposal, several delegates stated that there was a need to present in further detail the composition of the commodities at issue and their classification. In this respect the US Delegate offered to submit further information on the products and their composition during the intersession.
7. The Sub-Committee concluded the discussion by agreeing to place the text of the proposed amendments to the Nomenclature and to the Explanatory Notes in square brackets, on the understanding that the Secretariat's proposal for Notes 1 (p) and (q) to Chapter 48 replaced the original US-proposal, and to continue the examination of the proposal at its next session on the basis of a new working document. The Chairperson invited administrations to submit their comments to the Secretariat during the intersession, especially with regard to the location of the new heading, e.g., Chapter 96 or Section XI.
8. The text of the proposal, put in square brackets, is reproduced in Annex F/12 to this Report.

\* \* \*

| 1         | 2   | 5                      |
|-----------|---|------------------------|
| NR0711E1a | Possible amendment of headings 20.08 and 20.09. | <u>See Annex F/13.</u> |

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

1. The US Delegate opened the discussions by providing a few clarifications, given that in his view the most important aspects of the matter were already addressed in working Doc. NR0711E1a and in the additional information supplied by the Secretariat. He considered that the products concerned were readily identifiable and that their classification was not at issue.
2. He also responded to the concerns expressed by the Secretariat in paragraphs 8 to 11 of the working document, by specifying that :
  - the berries referred to in his request were a variety of the genus *Vaccinium macrocarpon*;
  - they were often put up in plastic packages containing up to about 10 kg of berries;
  - the berries could keep for periods in excess of 2 years if stored at a temperature below 7 °C; and
  - the juice was also sold in the form of concentrated juice to which water or sugar must be added.
3. Finally, he said that the US was in favour of inserting the scientific (Latin) name of the product in the subheading texts.
4. Other delegates, including the Delegates of the EC, Canada and Switzerland, supported the amendment proposed by the US Administration but stressed the need to establish whether the English term “cranberries” should be translated into French as “airelles rouges” or “canneberges”.
5. In this connection, the EC Delegate said that the berries known in French as “airelles rouges”, belonging to the genus *Vaccinium macrocarpon*, which were often eaten in the

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

United States and Canada, were not the same as berries of the genus *Vaccinium oxycoccus*, eaten in Europe, commonly known in French as “canneberges”. It was therefore necessary to establish which term, in French and in Latin, was the more appropriate.

6. Another delegate wondered whether there was a risk that this amendment might give rise to a contradiction between the scope of subheading 0810.40 (which covered cranberries, bilberries and other fruits of the genus *Vaccinium*) and those of the proposed subheadings of headings 20.08 and 20.09. However the Secretariat dispelled this doubt by pointing out that the proposed amendment related only to cranberries and not to all red berry fruits : hence the need to establish which Latin term should be used, with reference to the author of the Latin name.
7. At the end of the discussions, the Secretariat said that a new working document would be prepared for the next session, taking account of the comments made by the various delegates, the outcome of its research into the French and Latin translations, and proposals to be submitted by the countries concerned.
8. In conclusion, the Sub-Committee was in favour of adopting the proposed amendment to headings 20.08 and 20.09 set out in the Annex to document NR0711E1a, although it placed the words “airelles rouges” in square brackets pending a clear and precise definition of the terms.
9. The text, with the French reference to the fruit placed in square brackets, is reproduced in Annex F/13 to this Report.

\* \* \*

| 1  | 2   | 4                      |
|--|---|------------------------|
| NC1198E1a<br>NC1248E1b,<br>Annex F/9<br>(HSC/40) | Possible amendment of Note 1 to Chapter 38. | <u>See Annex F/14.</u> |

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

1. Introducing the working document, the Chairperson invited delegations to consider the proposals made by South Africa, Brazil and the Secretariat in respect of the amendments of Note 1 (b) to Chapter 38 and to the Explanatory Notes to Chapters 21 and 38.
2. The Secretariat pointed out, that, while South Africa's proposal involved an amendment to the Nomenclature, the other two options referred only to amendments to the Explanatory Notes.
3. Several delegations spoke in support of amending only the Explanatory Notes disregarding, therefore, the proposal of South Africa.
4. The EC Delegate, expressed his preference for the first alternative included in the proposal from Brazil. He further explained that, in his opinion, the proposal clarified the scope of heading 21.06 and Chapter 38 and that the text was also supported by the European Industry. He pointed out, however, that the reference to the Codex Alimentarius should be deleted from the text in order to avoid problems related to possible future modifications of the Codex.
5. Other delegates who took the floor, voiced their support for the latter approach.
6. However, the Delegate of Canada affirmed that he was not in a position to support the proposal from Brazil. He further indicated that consultations at national level had not been concluded and that he, therefore, could not accept the submission of a bilingual annex without square brackets to the Harmonized System Committee.
7. The Secretariat summarised the discussion and suggested to forward to the Harmonized System Committee a bilingual annex with the first proposal from Brazil (without the reference to the "Codex Alimentarius") into square brackets. He also pointed out that the

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

term "DATEM", included in the penultimate line of the proposal, referred to a chemical abbreviation and not to a trade name. However, following the proposal from the US Delegate, he suggested to delete this term from the proposal.

8. After further discussions, the Sub-Committee agreed to proceed on the basis of the proposal of the Secretariat.
9. The texts placed in square brackets are reproduced in Annex F/14 to this Report.

\* \* \*

| 1   | 2                                    | 5                      |
|---|--------------------------------------|------------------------|
| NC1211E1a<br>NC1248E1b,<br>Annex G/20<br>(HSC/40) | Possible amendment of heading 85.17. | <u>See Annex F/15.</u> |

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

1. The EC Delegate noted that during the Harmonized System Committee's 40<sup>th</sup> Session, the US had made an interesting comment on this issue that provoked much consideration within the EC, and on reflection during the time between that meeting and this meeting, the Communities had come to the conclusion that different terms should in fact be used in headings 85.17 and 85.25, to reflect the different kinds of technologies involved.
  
2. As further explained by the Delegate of France, the more general term, "transmission" should be used in heading 85.17, and to be certain that all kinds of data dissemination technologies would be covered, "l'émission" should be added to "la transmission ou la réception" in the heading text and in one-dash subheading 8517.6 (which mirrored the relevant part of the heading text).
  
3. The Delegate of Canada thanked the EC speakers for their suggestion and revised proposal and requested that the text be placed in square brackets for examination during the next Session of the Sub-Committee, to provide his administration and others to consider whether there might be any problem caused by the common usage of "émission" in Canada to refer to the actual programming content rather than the electromagnetic wave propagation technology. The Sub-Committee agreed.
  
4. Two other delegates noted that the variation in terminology found within the Explanatory Note to heading 85.17 resulted from blocks of text having been moved from the 2002 Explanatory Note to heading 85.25 to the 2007 version of the Explanatory Note to heading 85.17, in order to provide for the transfer of the corresponding articles. The EC Delegate stated that his proposed solution, involving the legal texts, was the best way to solve the problem caused by the differing legal texts and differing Explanatory Note texts, at this point in the review cycle.

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

5. No Delegate spoke in favour of examining further the Secretariat's listing of references to the term "transmission", and the Sub-Committee closed its current discussion of the Agenda item, agreeing to continue consideration of the proposed legal amendments, which were placed in square brackets and which can be found in Annex F/15 to this Report.

\* \* \*

| 1         | 2   | 5                     |
|-----------|---|-----------------------|
| NR0705E1a | Possible amendment of subheading 9504.30. | <u>See Annex F/9.</u> |

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

1. Introducing the working document, the Chairperson informed the Sub-Committee that the Japanese Administration had submitted a non-paper in connection with this agenda item.
2. The Delegate of Japan explained that the proposal made by her administration was drafted as a response to the questions raised by the Secretariat in paragraph 14 of the working document, and its intention was to clarify the classification of all video game consoles and machines including those operated by coins, banknotes, bank cards, tokens or by other means of payment.
3. The Secretariat pointed out that the Secretariat had followed the instructions given by the HS Committee (40<sup>th</sup> Session) to prepare an amendment for the re-numbering of subheading 9405.30 as presented in the Annex to the working document. In this context, the Secretariat had also proposed to the Sub-Committee in paragraph 15 of the document, that the English version of present subheading 9504.30 could be better aligned with the text of the heading by inserting the term “automatic”. He added that the other concerns raised by the Secretariat under this agenda item were related to Item III.A.11 (Possible new Note 6 to Chapter 94) and therefore the Sub-Committee was invited in paragraph 6 of the working document to consider both items together. However, since the Japanese non-paper, presented in English only, was a new proposal for re-structuring certain subheadings of heading 95.04 which was going beyond the scope of the present study, he invited Japan to make a formal proposal to the Secretariat taking account of the conclusions of the Sub-Committee on Agenda Item III.A.11. On this basis, the Secretariat could prepare a new document for consideration by the Sub-Committee at its next session.
4. Following the interventions by Canada, Brazil, the US and the EC confirming their agreement with the proposed amendment set out in the working document, the Sub-Committee approved the amendments presented in the Annex to the working document, including, as proposed by the Secretariat, the insertion of the term “automatic” in the English text of the subheading concerned.

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

5. The texts approved are set out in Annex F/9 to this Report.
  
6. Nevertheless, as the aforementioned delegates also felt that the new proposals made by the Japanese Administration were interesting and deserved further consideration, the Sub-Committee invited Japan to make a formal proposal to the Secretariat for inclusion in a new document to be examined at the next session.
  
7. The Delegate of Japan agreed, appreciating the comments made and concerns expressed by the Sub-Committee and the Secretariat.

\* \* \*

ANNEX E

ADDITIONAL LIST

| Working Doc. | Subject   | Classification Opinions | E.N. amendments | Nomenclature amendments |
|--------------|---|-------------------------|-----------------|-------------------------|
| 1            | 2   | 3                       | 4               | 5                       |
| NR0713E1a    | 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. After the introduction of the working document by the Chairperson, the representatives of the Research Group for Biological Arms Control of the University of Hamburg (Germany) presented the background of the proposal, indicating that the Research Group was a non-governmental academic research group, forming part of the Carl Friedrich von Weizsäcker Centre for Science and Peace Research at Hamburg University (Germany). The proposal had been made in the framework of a project that dealt with a trade monitoring concept for bioweapons and relevant equipment. The project had received funding from the Volkswagen Foundation in Germany and the MacArthur Foundation in the United States.
  
2. The aim of the proposal was to facilitate the identification of biological dual-use items by exporters, importers, Customs authorities and Border Services in order to strengthen export controls and the implementation of United Nations Security Council Resolution 1540 (2004) on the non-proliferation of weapons of mass destruction. The proposal consisted essentially of a list of items which, according to the research group, should be identified in the HS Nomenclature by individual subheadings. The proposed list contained biotechnology dual-use equipment, i.e., equipment for the production of microbial pathogens and toxins, downstream processing equipment such as filters, centrifuges, separators, dryers, milling equipment, biosafety and sterilization equipment, equipment for research and genetic engineering and dissemination equipment, as well as plant inoculation chambers and detection assays.

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

3. To illustrate the goods included in the list an example was given of fermenters, which included a relatively new development in the form of a disposable fermenter of a capacity of approx. 60 litres. Cleaning and sterilization after use was no longer necessary, the user just needed a new plastic container. Disposable fermenters, when empty, looked not much different from plastic bags. One of the representatives continued to explain that there were identifiable design features which distinguished biotechnology equipment which was made for use with non-pathogenic material from equipment which was for use with infectious material without causing health risk for workers or a contamination of the environment. Whether or not the equipment for use with pathogenic material would be used for peaceful or hostile purposes could, however, not be determined from these design features.
4. The representatives of the Research Group mentioned as advantages of the proposal various possibilities like (i) better identification of biological dual-use items by exporters and importers, and by Customs authorities and border officers in countries of origin and destination, (ii) the increased co-ordination of export controls and (iii) the improved implementation of UNSC Resolution 1540 (2004). Commercial actors would benefit with data for market analysis and a more transparent classification of products for trade declarations. There would also be benefits for bioweapons non-proliferation efforts such as transparency on transfer of equipment relevant for bioweapons programmes and identification of possible efforts for biological weapons development.
5. Several speakers thanked the representatives of the research group for their informative presentation. There was consensus in the Sub-Committee to give further consideration to the matter, while stressing that it was important that the proposed list of items would be “translated” into HS-language, in other words that the items that needed to be covered were sorted out in terms of HS-headings. In this respect one delegate mentioned that a preliminary study had shown that the majority of the items perhaps would fall under the headings 84.19 and 84.24.
6. Another delegate pointed out that previous submissions from non-governmental organizations had been put forward by an authorized administrative body for some form of international accord. Recognizing that there was no international agency for the Biological and Toxins Weapons Convention, he questioned whether or not this type of proposal for administrative changes related to the Convention might not be directed towards the Security Council subcommittee on 1540 (“the 1540 Committee”) for endorsement (or not). Regarding E/1/2.

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

the verification system referred to in the fourth column of the Annex to the working document NR0713E1a, he observed that to his knowledge the BWC-verification system had not been implemented formally and in fact discussions were inactive in that regard.

7. The Sub-Committee concluded the discussion by agreeing to instruct the Secretariat to prepare a list with the proposed items to provide separately in the HS for the Committee in March 2008 with a request for the HS Committee to classify these commodities. The Secretariat, as far as possible, would already indicate its view on the classification of these items in order to support the work of the HS Committee. On that basis a further working document would be prepared for the next session of the Review Sub-Committee in May 2008 which would enable the Sub-Committee to consider the consequences of the proposal.

\* \* \*



| 1         | 2  | 5                      |
|-----------|--|------------------------|
| NR0714E1a | Possible amendment of heading 06.03 (Proposal by China). | <u>See Annex F/16.</u> |

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

1. There was general support in the Sub-Committee with respect to the proposed introduction of a new subheading for lilies in heading 06.03, in the light of the information provided by China in the working document.
2. With regard to the text of the proposed new subheading 0603.15 the EC Delegate pointed out that the term “lis” in French was sometimes taken to include species that did not belong to the Liliium family. He also voiced concerns vis-à-vis the translation into other languages. In order to ascertain that the new subheading would have the same scope in all linguistic versions, he suggested that the Sub-Committee consider the use of the Latin name in the subheading text.
3. The Sub-Committee recognised the importance of ensuring the strict alignment between the English and the French texts of the subheading and invited the administration of China to clarify whether its intention was to cover in the new subheading the entire Liliium family or some of its species only, which were traded internationally. A reference to the Liliium family - in square brackets – was included in the subheading text pending further examination of the matter at the Sub-Committee’s next session. The Delegate of China undertook to provide additional information in this respect during the intersession.
4. The Secretariat was tasked to look into the problem of possible lack of alignment between the terms “lis” in French and “lilies” in English and to report its findings to the Sub-Committee.
5. The text of the proposal is reproduced in Annex F/16 to this Report.

\* \* \*



| 1         | 2                                   | 4                      |
|-----------|-------------------------------------|------------------------|
| NR0715E1a | Possible amendment of heading 84.79 | <u>See Annex F/18.</u> |

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

1. Opening the discussion, the US Delegate informed the Sub-Committee that his Administration had classified passenger boarding bridges in heading 84.28. Since the proposal came out from the fact that the products concerned should have been classified in heading 84.79, he suggested to submit the issue to the Harmonized System Committee for a decision about the classification of the products.
2. The Delegate of Brazil said that his Administration had classified the passenger boarding bridges in heading 84.79, as suggested by the Chinese Administration. As regarded the possible creation of a new legal Note to Chapter 84 excluding these commodities from heading 84.28, he expressed the view that such a Note was not needed. The creation of an exclusion paragraph in the Explanatory Note to heading 84.28 would be sufficient.
3. Stating that the Explanatory Note to heading 84.28 mentioned several examples of machinery for moving passengers, the Delegate of Canada supported the classification of these products in heading 84.28. On the other hand, the Delegate of China argued that machinery of heading 84.28 were used for moving of passengers, but the products at issue did not move passengers in any way and, therefore, the products could not be classified in heading 84.28.
4. According to the fact that there were two possible headings for the classification of the products, the Delegate of Russia supported the submission of the issue to the HS Committee for a classification decision.
5. The Sub-committee agreed to submit the issue to the HS Committee and put the Chinese proposal in the square brackets.
6. The Deputy Director invited China and other Members which were producers of these commodities to send the Secretariat more information about the products that would allow

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

the Secretariat to prepare a comprehensive document for the forthcoming session of the HS Committee.

7. The text placed in square brackets is set out in Annex F/18 to this Report.

\* \* \*

|           |   |
|-----------|---|
| 1         | 2   |
| NR0719E1a | Possible amendment of Note 8 (b) to Chapter 85 (Proposal by Japan). |

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

1. As agreed during the consideration of the Draft Agenda, the Sub-Committee held a preliminary discussion of the working paper. The Delegate of Japan explained that her administration was requesting a preliminary discussion at this time because an international conference of the semiconductor industry was scheduled for Spring of 2008, and the Sub-Committee would benefit greatly from the conclusions and findings to be obtained during that conference. She indicated that her Administration will report on the conference to the Sub-Committee during the intersession between this Session and the 37<sup>th</sup> Session.
2. The Deputy Director noted that the Japanese proposal had been submitted too close to the meeting date for the Secretariat to research the matter and prepare comments to assist the Sub-Committee. He urged all Administrations to submit any contributions for the 37<sup>th</sup> Session by March 2008, so that the Secretariat may prepare timely working papers, with appropriate comments.
3. Several delegations took the floor to express their concern with the difficulty in assessing the product shifts that would result from the adoption of the proposal offered by Japan. There was uncertainty regarding the actual nature of the articles covered by the proposal. Consequently, a major concern was that the proposed amendment would extend the scope of heading 85.42 to articles currently considered to be incomplete machines (by application of GIR 2 (a)) or parts of machines, and would result in the transfer of unknown quantities of articles, from headings which identified them as specific machines or as parts of a specific machine, to a heading that described them only as electronic integrated circuits. The Japanese Delegation was requested to provide further examples of actual products which their proposal would cover.
4. Another reason raised for a cautious approach to such an expansion of heading 85.42 was that Note 8 to Chapter 85 gave priority to classification in that heading, and it was important that the Sub-Committee understand fully the extent to which the proposal would

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

expand the scope of heading 85.42 and the kinds of articles which would be transferred to that heading by the proposed amendment.

5. The Sub-Committee agreed to revisit the proposal during its 37<sup>th</sup> Session on the basis of the current proposal and the further submission from the Japanese Administration.

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| NR0720E1a | Possible amendment of subheading 8523.40. | <u>See Annex F/17.</u> |

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

1. After the Delegate of Japan had clarified the reason for her administration's proposal, several delegates expressed their support to create new subheadings for recorded and unrecorded optical media, because they had similar subdivisions in their national nomenclatures.
2. The Sub-Committee unanimously approved the proposed amendments.
3. The text approved by the Sub-Committee is set out in Annex F/17 to this Report.

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