



SCIENTIFIC SUB-COMMITTEE

-
17th Session
-

NS0060E2

O. Fr./Eng.

Brussels, 17 January 2002.

REPORT OF THE SCIENTIFIC SUB-COMMITTEE

1. The Scientific Sub-Committee held its 17th Session from 14 to 17 January 2002 at the Headquarters of the World Customs Organization in Brussels, under the chairmanship of Mr. G.J. SLUIS (Netherlands).
2. The following 36 countries and five organizations were represented :

Countries

ALGERIA	GREECE	NETHERLANDS
AUSTRIA	INDIA	POLAND
AZERBAIJAN	INDONESIA	PORTUGAL
BANGLADESH	IRELAND	SAUDI ARABIA
BELGIUM	ITALY	SLOVAK REPUBLIC
BRAZIL	JAPAN	SPAIN
CANADA	KENYA	SRI LANKA
CHINA	KOREA (Rep. of)	SWITZERLAND
DENMARK	LIBYAN ARAB JAMAHIRIYA	THAILAND
EGYPT	MADAGASCAR	TURKEY
FRANCE	MALAYSIA	UNITED KINGDOM
GERMANY	MEXICO	UNITED STATES

Organizations

EUROPEAN COMMUNITY (EC)
ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS (OPCW)
CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD
FAUNA AND FLORA (CITES)
UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)
ROTTERDAM CONVENTION

3. A list of participants in the meeting is reproduced at Annex D.

I. AGENDA

4. The Agenda of the Scientific Sub-Committee set out below serves as the "Table of Contents" of this Report.

II. TECHNICAL QUESTIONS EXAMINED BY THE SCIENTIFIC SUB-COMMITTEE

5. The comments made during the discussions and the conclusions reached by the Scientific Sub-Committee on the various agenda items are set out in Annexes A and C.

III. GENERAL QUESTIONS

6. The results of the issues under Agenda Item III are summarized in Annex B.

IV. RETIREMENT OF MRS. A. KAUBA (DELEGATE OF AUSTRIA)

7. The Chairman informed the Sub-Committee that Mrs. A. Kauba, who had been the Delegate of Austria for many years, would retire soon. He mentioned her remarkable achievements and thanked her for her valuable contributions to the Sub-Committee.

G.J. SLUIS,
Chairman.

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ANNEX A

TECHNICAL QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments	
1	2	3	4	5	
NS0038E1	Classification of certain INN products and pharmaceutical intermediates.				<u>See Annex C/1.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee examined the classification of 10 INN products, which had been postponed at its last session.

Alemcinal (List 82)

2. One delegate explained that this product was a structural derivative of erythromycin but according to technical literature was always used for treating gastrointestinal diseases (motilin agonist) and never as an antibacterial product. For these reasons he was of the view that this product should be classified in heading 29.32 (subheading 2932.29) as a cyclic lactone rather than an antibiotic derivative of erythromycin, of heading 29.41.

3. The Sub-Committee agreed to recommend classification of alemcinal in heading 29.32 (subheading 2932.29) as a cyclic lactone.

Evernimicin (List 82)

4. One delegate explained that this product was described in technical literature as being both antibacterial and antibiotic, and having *in vitro* bacteriostatic activity against a wide variety of gram positive organisms. It was produced by a microorganism (*Micromonospora carbonaceae*). On the basis of this information he was of the view that this product should be considered to be an antibiotic of heading 29.41 (subheading 2941.90).

5. The Sub-Committee agreed to recommend classification of evernimicin in heading 29.41 (subheading 2941.90) as an antibiotic.

Metreleptin (List 82)

6. One delegate explained that this product should be considered to be an analogue of the natural hormone leptin. Since metreleptin had a similar activity as leptin, he was of the view that it should be classified in heading 29.37 (subheading 2937.19) as a polypeptide hormone.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

7. The Sub-Committee agreed to recommend classification of metreleptin in heading 29.37 (subheading 2937.19) as a polypeptide hormone.

Onercept (List 82)

8. The Sub-Committee first discussed the possible classification of this product in heading 30.02 (subheading 3002.10) as a modified immunological product. However, it was felt that in view of the restrictive nature of Note 2 to Chapter 30, this product was not classifiable in that heading as a modified immunological product. Consequently, the Sub-Committee agreed to recommend classification of onercept in heading 29.34 (subheading 2934.99), based on its structure, as a heterocyclic compound.

Pegvisomant (List 82)

9. One delegate explained that this product was used for treating accromegaly diseases (produced by hypersecretion of the growth hormone). The product was therefore a hormone antagonist. Note 8 to Chapter 29 provides that the term "hormones" include hormone antagonists. He was therefore of the view that pegvisomant should be classified in heading 29.37 as a hormone. With regard to the subheading he indicated that the product should be classified either in subheading 2937.19 or 2937.90

10. The Sub-Committee agreed to recommend classification of pegvisomant in heading 29.37. With regard to the subheading, the Sub-Committee suggested classification in subheading 2937.19 as a polypeptide (modified) hormone.

Doripenem (List 83)

11. One delegate explained that this product was a derivative of thienamycin (produced by *streptomyces cattleya*) and therefore should be classified in heading 29.41 (subheading 2941.90) as an antibiotic.

12. The Sub-Committee agreed to recommend classification of doripenem in heading 29.41 (subheading 2941.90) as an antibiotic.

Fondaparinux sodium (List 83)

13. The Sub-Committee took note of the change of the name of this product (to replace fondaparinux sodium of INN List 79). One delegate explained that this product was related to heparin but was a separate chemically defined compound and was obtained by synthesis. It was neither a polymer, a glycoside nor a sugar. He was therefore of the view that fondaparinux sodium should be classified in heading 29.32 (subheading 2932.99) as a cyclic acetal.

14. The Sub-Committee agreed to recommend classification of fondaparinux sodium in heading 29.32 (subheading 2932.99) as a cyclic acetal.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

Leridistim (List 80)

15. The Sub-Committee first agreed to rule out the possible classification of this product in heading 30.02 (subheading 3002.10) as a modified immunological product, in view of the restrictive nature of Note 2 to Chapter 30. The Sub-Committee then agreed to recommend classification of leridistim in heading 29.34 (subheading 2934.99), based on its structure, as a heterocyclic compound.

Pegacaristim (List 80) and Pegnartograstim (List 80)

16. The Sub-Committee felt that the classification issue with regard to both these products was the same. It was agreed to rule out the possible classification of these two products in heading 30.02 (subheading 3002.10) as modified immunological products, in view of the restrictive nature of Note 2 to Chapter 30.
17. The Sub-Committee then considered the potential classification of these two products in heading 35.04 (subheading 3504.00) as a protein derivative, in heading 39.07 (subheading 3907.20) as a polyether or in heading 39.13 (subheading 3913.90) as a modified natural polymer.
18. In view of the residual nature of heading 39.13, the Sub-Committee agreed that these products should not be classified in that heading.
19. One delegate stated that this question might involve the interpretation of the GIRs and that therefore it should be referred to the HS Committee for its opinion. Since there were differing views, the Sub-Committee agreed that the classification of pegacaristim and pegnartograstim should continue to be studied.
20. The recommended classifications are set out in Annex C/1 to this Report. The two products, pegacaristim and pegnartograstim, whose classification has not been settled, have been placed in square brackets.

* * *

1	2
NS0039E1	Possible guidelines to facilitate the classification of INN products.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Chairman first informed the Sub-Committee that he had distributed an informal note explaining the nature of the Proposed and Recommended Lists of INNs published by the WHO. He explained that fewer than 2% of INNs would be deleted from the consideration of the Sub-Committee if it limited its deliberations to the Recommended Lists rather than the Proposed Lists. He also drew the attention of the Sub-Committee to the Web site of the WHO and explained that it could be very useful to delegates as well as the Secretariat in obtaining information on all of the Proposed and Recommended INN Lists and related chemical structures. He then invited delegates to express their views on the question of continuing to examining the INN Lists in full.
2. Many delegates were of the view that this exercise should continue. It was explained that this would help with the implementation of the WTO Pharmaceuticals Agreement and would also aid manufacturers and Customs administrations in determining the proper HS classification of INN products.
3. The Sub-Committee therefore supported the continuation of this exercise. It also agreed to continue the present practice of examining the Proposed Lists rather than the Recommended Lists, which would be published much later. In this connection, the Director reminded the Sub-Committee that INN lists 84 and 85 had been sent to administrations on 10 December 2001 and requested delegates to submit comments by mid-March 2002 at the latest so that the Secretariat could prepare a working document for the Harmonized System Committee's 29th Session.
4. The Chairman then invited delegates to express their views with regard to guidelines setting out general principles applicable to the classification of chemical products, in particular INN products.
5. One delegate explained that such guidelines would not be useful to the users of the Harmonized System, unless they were reflected in the Explanatory Notes. He suggested that whenever a difficult classification issue was resolved, the Sub-Committee should also look into possible amendments to the Nomenclature and/or Explanatory Notes, in a similar way as the HS Committee. He felt that with regard to chemical products, such as INNs, this matter had not been duly addressed in the past.
6. In this connection, he proposed that the Secretariat should carry out a study, with the help of proposals and comments by administrations, on each issue listed in paragraph 8 of Doc. NS0039E1 and to prepare working documents on each item for examination by the Sub-Committee.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

7. Mr. H. KAPPLER, the Director of Tariff and Trade Affairs, explained that the Review Sub-Committee would shortly begin a comprehensive review of the HS Explanatory Notes including the chemical Chapters. He indicated that the items listed in paragraph 8 of the working document would be included in that review.
8. Many other delegates stressed the usefulness of the EC document entitled "Chapter 29 of the Customs Tariff" in explaining the classification of chemicals in Chapter 29 of the Harmonized System. It was noted that most of the issues listed in paragraph 8 were covered by this document, but the document needed to be updated. It was further explained that the EC was presently working on such an update.
9. In addition, one delegate pointed out that Doc. 36.998, which had been a submission by the UK Administration (1991) for the preparation of an HS Training Module on Chapter 29, could also be useful in establishing general guidelines for the classification of chemicals in Chapter 29. The Sub-Committee took note of the fact that this document could be melded into the EC document when the latter was updated.
10. Finally, the Sub-Committee agreed that the Secretariat should incorporate the substance of the EC document in the Customs Laboratory Guide after both publications had been revised.

* * *

1	2	4	5
NS0040E1	Amendments to the Nomenclature and the Explanatory Notes to clarify the classification of co-ordination compounds.	<u>See Annex C/2.</u>	<u>See Annex C/2.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. At the outset, the Chairman reminded the Sub-Committee that, at the last session the Sub-Committee had agreed to a new Note 5 (c) (3) to Chapter 29 to clarify the classification of co-ordination compounds and the task for this session was to re-examine the consequential amendments to the Explanatory Notes only. Subsequently, a small informal working group represented by several administrations was established to examine differing proposals for the drafting of the amendments to the Explanatory Notes, thus facilitating discussions in the Sub-Committee.
2. On the basis of the discussions in the informal group and subject to certain modifications, the Sub-Committee recommended the proposed amendments to the Explanatory Notes.
3. The recommended texts are set out in Annex C/2 to this Report.

* * *

1	2	4
NS0041E1	Amendments to the Explanatory Notes to Chapter 29 to clarify the classification of certain organic chemical compounds.	<u>See Annex C/3.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Chairman first recalled the decision of the Sub-Committee at its last session to recommend the incorporation of the substance of paragraphs 7.A.(2) and 7.A.(5) of Doc. 37.886 in the Explanatory Notes. He also noted the additional proposal of Canada to incorporate the substance of paragraph 7.A.(1) in the Explanatory Notes, as mentioned in paragraph 4 of Doc. NS0041E1.
2. The Delegate of Canada informed the Sub-Committee that Canada could agree to the modification of Canada's proposed amendment in respect of paragraph 7.A.(1) of Doc. 37.886 as suggested by the Secretariat in the Annex to Doc. NS0041E1. However, two other delegates pointed out that the last sentence of the proposed text should be deleted as certain carbon compounds, such as ethyl alcohol, were classifiable outside of Chapter 29. The Sub-Committee agreed with these modifications.
3. With regard to paragraph 16 of Doc. NS0041E1, one delegate pointed out that the substance of paragraph 7.A.(2) of Doc. 37.886 had been applied for the classification of many chemical products in the past and therefore there could be a number of re-classifications that would result if the HS Committee were to change the classification basis for the chemicals in question by applying Note 3 to Chapter 29 at subheading level.
4. The Director recalled that the HS Committee had looked into the issue of the application of the GIRs at subheading level at the request of this Sub-Committee at its last session and had not yet reached a conclusion. He therefore suggested that consideration of the question mentioned in paragraph 3 above should be postponed until the HS Committee has made a final decision on this matter.
5. The Sub-Committee agreed to leave the relevant texts in square brackets pending the decision of the HS Committee.
6. With regard to the proposed amendments in respect of paragraph 7.A.(5) of Doc. 37.886, the Delegate of Spain explained that both the Mexican and Canadian proposals should be modified since, according to those proposals radicals should be attached to the N atom "through a carbon atom", thus resulting in a change with respect to many past classification decisions. Alternatively, he proposed to replace the last part of the Mexican proposal by the expression "hydrogen or another atom or an inorganic or organic radical of varying complexity (including double bonds or cycles)".
7. The Sub-Committee agreed to the alternative proposal by Spain. It also agreed to a suggestion by another delegate to include a new example, sildenafil citrate, in the Explanatory Note to heading 29.35.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

8. The recommended texts and those left in square brackets are set out in Annex C/3 to this Report.

* * *

1	2
NS0042E1	Classification of certain hormones in the HS Commodity Data Base.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. Drawing the attention of the Sub-Committee to Agenda Item II.13 with respect to the functions of prasterone and tibolone, the Chairman invited delegates to express their views only on the classification of thymostimulin under this agenda item.
2. Based on the information reflected in paragraphs 6, 7 and 8 of the working document, one delegate explained that since thymostimulin was a biological response modifier, being a partially purified extract of a calf thymus composed of a mixture of bovine thymic peptides, it should be classified in heading 30.01.
3. Based on the above, the Sub-Committee agreed to recommend the classification of thymostimulin in heading 30.01 (subheading 3001.20) as an extract of glands or other organs or of their secretions.

* * *

1	2	
NS0043E1	Classification of certain chemical products under the 2002 version of the Harmonized System.	<u>See Annex C/4.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee began the discussion of this item by examining the scope of new heading 29.37, taking into account the newly introduced Note 8 to Chapter 29.
2. One delegate expressed the view that neuromodulators and neurotransmitters such as dopamine, acetylcholine, serotonin and histamine should not be considered to be hormones of heading 29.37.
3. A second delegate explained that, since the first part of heading 29.37 referred to hormones, natural or reproduced by synthesis, that heading should be limited to cover only those products that could be considered to be natural or reproduced by synthesis. A third delegate was of the view that in applying new Note 8 (a) to Chapter 29, the chemical structure of the products concerned should also be taken into consideration.
4. On the basis of the above views, the Sub-Committee examined the products set out in the Annexes to Doc. NS0043E1. There were some concerns in respect of growth factors and vasopressin V1 and V2 receptor antagonists as to whether they could be considered to be hormones. The Sub-Committee agreed that they were not hormones of heading 29.37.
5. The Sub-Committee finally agreed not to consider products related to neurotransmitters or neuromodulators, endothelin receptor antagonists, agents influencing the respiratory tract, growth factors, adrenoreceptor antagonists and NMDA receptor antagonists, that were listed in the Annexes to Doc. NS0043E1, to be hormones of heading 29.37. However, with regard to labradimil (bradykinin receptor agonist), the Sub-Committee agreed to consider this product to be a hormone of heading 29.37.
6. The recommended classifications are set out in Annex C/4 to this Report.

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1	2
NS0044E1	Proposal by the US Administration to amend the Nomenclature and Explanatory Note to heading 38.21.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee examined the US proposal to amend the Nomenclature and Explanatory Note to heading 38.21 with regard to prepared culture media, in accordance with paragraphs 16.1 to 16.3 of Doc. NS0044E1.

Paragraph 16.1

2. Many delegates were of the view that the proposed text would widen the scope of present heading 38.21 by transferring culture media for developing and maintaining cultures of higher organisms to that heading. Although the composition and use of such media was very similar to the media described in the current Explanatory Note to heading 38.21, they were not presently covered by this heading. They supported the US proposal, taking into account the recent development of technology in this field.

3. Several other delegates were of the view that the expression “prepared culture media” as proposed was extremely vague and would make it difficult to distinguish between the products falling in the proposed revised heading 38.21 and other media, e.g., those used for preparing yoghurt, which would fall in Chapter 4, and therefore preferred the status quo. If the proposed wording were to be adopted, a legal Note defining the scope of the heading would need to be inserted.

Paragraph 16.2

4. Although certain delegates supported the proposed text of the Explanatory Note since it reflected the recent development of technology, the Sub-Committee did not examine this question in detail in view of divergence of opinions as mentioned in paragraph 3 above.

Paragraph 16.3

5. The Sub-Committee was of the view that the definitions of procaryotic and eucaryotic cells provided in paragraph 9 of Doc. NS0044E1 were well founded.

6. In this connection, certain delegates were of the view that the term “micro-organisms” appearing in present heading 38.21 did not cover viruses. According to them, viruses were not living organisms and therefore, they considered that even the present Explanatory Note to heading 38.21 exceeded the scope of the legal text.

* * *

1	2
NC0404E1 (HSC/27) NS0045E1	Classification of certain acid-added clay products.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. There was consensus in the Sub-Committee that, although the washing of mineral substances with chemical substances to eliminate impurities without changing their structure was permitted by Note 1 to Chapter 25, the controlled addition of sulfuric acid to clay products via the patented process mentioned in the working documents went beyond simple washing within the meaning of Note 1.

2. Concerning the question of whether the addition of acid to clay products of Chapter 25 changed the “structure” of the products in question, it was noted that after the addition of sulfuric acid, the resulting bleached clay product had not been washed but rather dried and comminuted. That is, the added sulfuric acid remained in the product. Even though the addition of sulfuric acid to clay products would not necessarily change their crystalline structure, it would certainly change their chemical structure since this process would result in an exchange in which certain ions (e.g., calcium or potassium ions) found in the clay products would be replaced by hydrogen ions. This was clear from the penultimate sentence of paragraph 5.11 of Doc. NS0045E1 which stated that “... the gypsum found in the **B81**, **Color master** and **Pro-Active** products is the result of the reaction between the calcium in the clay and the sulfuric acid”. As a result of this treatment, the products under consideration could be used in the bleaching of oils, which was not usual for natural clayey substances. As such, these products were not products of Chapter 25, but rather, similar to the activated natural mineral products of heading 38.02.

3. As regards the point made by the importer that the addition of sulfuric acid to the starting clay product resulted in only “marginal” changes in the surface area, it was remarked that, based on Parts (A) (I) and (A) (II) of the Explanatory Note to heading 38.02 (pages 671 and 672), activated natural mineral products could have a very large specific surface or a fairly small surface. When activated by means of an acid, activated clays were mainly used for decolourising animal, vegetable or mineral oils, fats or waxes as explained in Item (b) (3) of the Explanatory Note to heading 38.02 (page 672).

4. With regard to the classification of the “**Pure-Flo B81**”, “**Puro-Flo Pro-Active**” and “**Pure-Flo Color Master**” acid-added clay products, one delegate took the view that these products could be classified in heading 38.24, taking into account that their specific surface area values were almost the same as that of the natural product “**Pure-Flo B80**” and that these products contained gypsum besides clayey substances according to their X-ray diffraction patterns given in Annex II to Doc. NS0045E1. However, the Sub-Committee was of the view that the products in question were classifiable in heading 38.02 (subheading 3802.90) since the terms of this heading were more specific than the terms of heading 38.24.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

5. Finally, the Sub-Committee agreed that there was no need to have samples of the products at issue analysed or to amend the relevant legal or Explanatory Notes texts. Nevertheless, the US Delegate indicated that he could obtain samples if needed. The Delegate of France stated that his administration had considerable experience with such products and was ready to analyse the samples if requested.

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1	2	
NS0046E1 NS0056E1	Review of the classification of certain chemical products relating to the Chemical Weapons Convention.	<u>See Annex C/5.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee continued its examination of the classification of the chemicals enumerated in Part A of the OPCW Handbook on the basis of Docs. NS0046E1 and NS0056E1.
2. The Sub-Committee agreed with the classifications suggested by the Secretariat in the Annex to Doc. NS0046E1, subject to certain corrections with regard to the molecular formulas of two products. Furthermore, in view of the lack of information with regard to certain of the chemicals, the Sub-Committee agreed to the Secretariat's suggestion to footnote those references, as explained in paragraphs 32 and 40 of Doc. NS0046E1.
3. The Sub-Committee also agreed with the HS 2002 classifications suggested by the Secretariat in the Annex to Doc. NS0056E1, taking into account paragraphs 7 and 9 of that document.
4. The list of 932 products and their recommended classifications are set out in Annex C/5 to this Report. In accordance with the suggestion in paragraph 2 above, footnotes were introduced at the end of the list, as explained in paragraphs 32 and 40 of Doc. NS0046E1.

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1	2	4	5
NS0047E1	Possible amendments to the HS Nomenclature and its Explanatory Notes regarding silicones (proposal by the US Administration).	<u>See Annex C/6.</u>	<u>See Annex C/6.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

Proposed exclusion Note 2 (a) to Chapter 39

1. One delegate supported the Secretariat's comments in paragraph 9 of Doc. NS0047E1 with regard to this proposed exclusion Note and indicated that the relationship between the proposed Note and silicones was obscure and indirect. She did not see the reason to limit the Note to products of heading 34.03 containing petroleum oil. She pointed out that products of heading 27.10 must be based on petroleum oil. She could see a benefit to the Note as it would remove any questions regarding the classification of a product that was potentially classifiable in Chapter 39, heading 27.10 or heading 34.03. Given that lubricating oils and greases could be collectively described as lubricating preparations, she suggested the following text for the proposed Note :

“(a) Lubricating preparations of heading 27.10 or 34.03”.

2. The Sub-Committee agreed with this view and therefore supported the above alternative text.

Proposed exclusion Note 2 (e) to Chapter 39

3. One delegate explained that the proposed Note, in its present form, would exclude from Chapter 39 any preparation that was based on colouring matter, where the colouring matter was a product of heading 32.06. The intent should be to exclude colouring preparations of heading 32.06.
4. She further indicated that the relevance of this proposed Note to silicone products had never been established and was not apparent. She questioned why this Note was limited to heading 32.06 (other colouring matter applied to inorganic and mixed organic/inorganic colouring matter and preparations thereof).
5. The Sub-Committee felt that this Note would not be necessary and agreed to delete it. However, it was placed in square brackets for the consideration of the Review Sub-Committee at the request of the **US** Delegate.

Proposed exclusion Note 2 (g) to Chapter 39

6. One delegate explained that the relevance of this proposed Note to silicone products had never been established and was not apparent. In its present form, the Note only applied to a portion of the products of heading 32.14. She felt that the present form of the Note

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

implied that other products of heading 32.14, for example resin cements and non-refractory surfacing preparations, were to remain classified in heading 32.14. The excluded and included products could have very similar compositions.

7. The Sub-Committee felt that this Note would not be necessary and agreed to delete it. However, it was placed in square brackets for the consideration of the Review Sub-Committee at the request of the **US** Delegate.

Proposed exclusion Note 2 (ij) to Chapter 39

8. The Sub-Committee felt that this Note would also not be necessary and agreed to delete it. However, it was placed in square brackets for the consideration of the Review Sub-Committee at the request of the **US** Delegate.

Proposed exclusion Note 2 (l) to Chapter 39

9. One delegate indicated that she could agree with the comments made by the Secretariat in paragraph 8 of Doc. NS0047E1 and therefore supported the version of the Note set out in square brackets in the Annex to the document.

10. The Sub-Committee agreed to support the alternative text proposed by the Secretariat.

Proposed exclusion Note 2 (m) to Chapter 39

11. One delegate indicated that she could not see the need to mention that this exclusion applied to fluids based on polyglycols, silicones or other polymers of Chapter 39. She proposed the following alternative text :

“(m) Products of heading 38.19”.

12. However, the Chairman noted that the text proposed by the **United States** was the same text that appeared in the Explanatory Note to heading 38.19 (page 693). The Sub-Committee therefore agreed to support the text proposed by the **United States**.

Amendments to the Explanatory Notes

13. The Sub-Committee then examined the proposed amendments to the Explanatory Notes, taking account of the Secretariat comments in Doc. NS0047E1, with a view to determining whether the proposed modifications were technically correct and these amendments would clarify the classification of silicone products.

14. The proposals relating to the above mentioned exclusion Notes which had been placed in square brackets were also placed in square brackets for the consideration of the Review Sub-Committee.

15. As regards Part (C) of the Explanatory Note to heading 28.04, the Sub-Committee agreed that the texts should be further elaborated by combining the existing texts and the two proposed texts in the Annex to Doc. NS0060E1 and therefore placed the texts in square

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

brackets. The Secretariat was asked to prepare a combined text for the consideration of the Review Sub-Committee.

16. Apart from the above, the Sub-Committee agreed to certain modifications as well as deletions of certain texts reflected in the Annex to Doc. NS0047B1.
17. The agreed texts and those placed in square brackets are set out in Annex C/6 to this Report.

* * *

1	2
NS0048E1	Classification of sucralose.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. Opening the discussion of this issue one delegate explained that heading 29.40 covered chemically pure sugars and based on the Explanatory Note to that heading, the saccharide units had to comply with specific criteria as defined therein. He pointed out that the fundamental question, therefore, related to the meaning of the term "sugars".
2. He was of the view that it was noteworthy that all of the examples provided in the Explanatory Note were carbohydrates with no halo-substitution. He explained that sucralose was sucrose with chlorine substitution and normally would be considered to be a derivative of sucrose.
3. Since the Explanatory Note to heading 29.40 excluded sugar derivatives, he was of the opinion that sucralose should be classified in heading 29.32 (subheading 2932.19) as a heterocyclic compound containing an unfused furan ring.
4. He also mentioned that the previous decisions taken to classify chloralose and clobenocide in heading 29.40 could be justified on the basis of their nature as sugar ethers. He was of the view that sucralose, on the other hand, could not be considered to be a sugar ether, acetal, ester or salt.
5. Another delegate also supported this view and stressed that based on the current Explanatory Note, heading 29.40 excluded sugar anhydrides, thio sugars, amino sugars and other sugar derivatives and therefore sucralose should be classified in Chapter 29 based on its chemical structure.
6. For the above reasons, the Sub-Committee agreed that sucralose would be more appropriately classified in heading 29.32 (subheading 2932.19) rather than in heading 29.40. Furthermore, there was no need to modify the legal or Explanatory Notes texts in this connection.

* * *

1	2	4
NS0049E1	Proposed amendment of subheading 2941.40.	<u>See Annex C/7.</u>

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. Opening the discussion, one delegate pointed out that the Sub-Committee at its 9th and 10th Sessions had examined the classification of florfenicol and had agreed to classify this product in subheading 2941.40 as a derivative of chloramphenicol and that subsequently the Harmonized System Committee had approved this classification.
2. He recalled the views expressed by the delegates at the 9th Session that florfenicol was a derivative of thiamphenicol, which was a synthetic product closely related to chloramphenicol. Since there were no new technical arguments, he was of the opinion that both thiamphenicol and florfenicol should remain classified in subheading 2941.40 as derivatives of chloramphenicol.
3. With regard to the proposed amendment to the Nomenclature, the same delegate expressed concern that such an amendment for derivatives of chloramphenicol only could affect the interpretation of the other subheadings of heading 29.41 which also referred to derivatives. Alternatively, he proposed to amend current Item (4) of the Explanatory Note to heading 29.41 to read "**Chloramphenicol** and its derivatives, e.g., thiamphenicol and florfenicol".
4. The Sub-Committee agreed that both thiamphenicol and florfenicol should remain classified in subheading 2941.40.
5. The Sub-Committee also agreed to the above proposed amendment to the Explanatory Notes. However, the Chairman invited administrations to forward proposals for any further amendments to the Explanatory Notes to clarify the classification of "derivatives" in heading 29.41.
6. The recommended text is set out in Annex C/7 to this Report.

* * *

1	2
NS0057E1	Functions of prasterone and tibolone.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. After a brief exchange of views, the Sub-Committee concluded that prasterone was used for its androgenic effects. The fact that it might be used in menopausal syndrome treatment, did not necessarily mean that it was an oestrogen.
2. Similarly, tibolone was found not to have oestrogen properties, but was used because of its androgenic activity.
3. Taking into account the reported activity of the two products, the Sub-Committee suggested classification in subheading 2937.29.

* * *

1	2
NC0483E1 (HSC/28) NS0058E1	Scope of headings 35.05 and 38.09.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee examined the scope of headings 35.05 and 38.09 within the context of the classification of, and the technical information available on, the six products at issue, namely, "CATO-SIZE® 52 A", "CATO® 15A", "ETHYLEX® 2040 Gum", "Astro X-101 Starch", "Penford® Gum 270" and "STA-LOK® 400".
2. One delegate explained that in view of the low content of defoamer (0.185% by weight) in "CATO-SIZE® 52 A" and phosphorus (0.3871%) and silicon (0.000392%) in "CATO® 15A" as reflected in paragraphs 3 and 5 of Doc. NC0483E1, these products did not appear to be mixed with other substances for a specific use.
3. He was of the view that in order to exclude these products from heading 35.05 they needed to be preparations for a specific use. In his view none of the six products were preparations as such, but were modified starches of heading 35.05.
4. It was also pointed out that according to Item (4) of the Explanatory Note to heading 35.05, this heading covered etherified or esterified starches used principally in the paper industry and that therefore these products would fall within the scope of heading 35.05.
5. The Sub-Committee agreed with these views.

* * *

1	2
NS0059E1	Classification of a medicated bone graft substitute called "Osteoset®".

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee first examined whether the product should fall in heading 30.06 or outside that heading.
2. Certain delegates were of the view that the product should be classified in heading 30.06 as a bone reconstruction cement, since the product had two functions, i.e., as a filling and as a medicament, and by virtue of Note 4 to Chapter 30, heading 30.06 took priority over any other heading of the Nomenclature. Furthermore, they noted that according to the Explanatory Note to heading 30.06 on page 576, the addition of medicinal substances was allowed.
3. The majority of the Sub-Committee, however, agreed with the Secretariat's opinion in paragraph 23 of Doc. NS0059E1, that classification in heading 30.06 would not be appropriate taking into account the nature of the product. The product could not be considered to be a "cement".
4. On the basis of the above, the Sub-Committee considered the appropriate heading for the classification of the product in question. One delegate questioned whether or not calcium sulfate, which was the main ingredient of the product, could be considered to be a medicament, indicating that the calcium sulfate pellets might be used alone as mentioned in paragraph 17 of Doc. NS0059E1.
5. However, the majority of the delegates considered that the product should be classified in heading 30.03 or 30.04, depending on the presentation of the product since the product would be spontaneously adsorbed and replaced by bone, thus being used for therapeutic purposes.
6. In this regard, several delegates expressed doubts as to whether the product at issue could be regarded as being put up in measured doses, since the product was in the form of pellets (to avoid dust) and the dosage did not have the normal degree of precision.
7. Other delegates were however of the view that even if it was difficult to regard the product as being put up in measured doses, it appeared that the product was put up in packings for retail sale and therefore it could fall in heading 30.04, by virtue of the second part of the text of heading 30.04. At subheading level, it was pointed out that since the product contained tobramycin, it should be classified in subheading 3004.20.
8. Finally, the Secretariat was asked to check whether the product was in fact traded in packings put up for retail sale for purposes of the discussion of this question at the next session of the HS Committee.

* * *

ANNEX B

GENERAL QUESTIONS

Working Doc.	Subject	Classification Opinions	E.N. amendments	Nomenclature amendments
1	2	3	4	5
NS0050E1	Decisions taken by the HSC at its 27 th and 28 th Sessions affecting the work of the Scientific Sub-Committee.			

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Fr.)

1. The Chairman briefly summarized the decisions taken by the HS Committee at its 27th and 28th Sessions and the pending questions affecting the work of the Scientific Sub-Committee.
2. The Sub-Committee took note of the developments in the HS Committee.

* * *

1	2
NS0051E1	New procedure for the approval of Scientific Sub-Committee reports.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. Following the introduction of the working document by the Chairman, the Director explained that the reason behind the proposal for the new reporting procedure was a recommendation of the Ad Hoc Group on Committee Structures and Working Methods. The Policy Commission had adopted this recommendation at its last session with a view to saving the resources of the Secretariat and Members and asked that it should be implemented immediately. This recommendation was applicable not only to the Policy Commission itself, but also the Council and other Committees, Sub-Committees and Working Parties or Groups, with exceptional cases where there were legal requirements to finalise reports at the end of sessions (e.g., the Harmonized System Committee).
2. The Director also reminded the Sub-Committee that the new recommendation of the Policy Commission was a reversal of a past Council Decision of June 1986 which referred, in part, to the adoption of Committee Reports at the end of each session to the extent possible.
3. With regard to the substance of the new procedure, many delegates expressed concern that the one-week period proposed by the Secretariat for submission of written comments by delegates on the draft report would not suffice. The common view was to extend this period to two weeks. Clarification of certain other points was also requested.
4. On the basis of the suggestions made by delegates for improving the procedure proposed in paragraph 4 of Doc. NS0051E1 and the clarification given by the Chairman and the Director, the Sub-Committee agreed to try the following new procedure :
 - The Secretariat will prepare all draft annexes to the SSC Report setting out the approved texts and provide them to delegates by the end of the SSC Session.
 - The Secretariat will not provide the narrative portions of the draft Report by the end of the session.
 - Accordingly, the SSC will no longer read and finalise the Report of the meeting at the end of the session.
 - The draft Report will be completed by the Secretariat during the week following the week in which the session was closed.
 - Upon completion by the Secretariat (normally, the first working day of the second week following the week in which the session was closed), the draft Report will be circulated, on an informal basis by e-mail (in "Microsoft Word" format) or, if necessary, by fax or express mail, directly to the SSC delegates only, for their comments.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

- The comment period will be two weeks and only written comments (by e-mail, fax, etc.) will be accepted on the draft Report. (The possibility of using a form as response sheet will be studied by the Secretariat).
 - The draft Report will be finalised by the Secretariat, in consultation with the Chairman of the SSC, on the basis of the written comments received. These written comments will not be circulated to all delegates. (However, the possibility of placing these comments on the SSC discussion forum will be studied by the Secretariat).
 - The final Report will be formally published, circulated to Members and placed on the agenda of the immediately following HSC session, in accordance with the existing procedure. Further comments on the final report, if any, can be made during the discussions on the adoption of the SSC Report by the HSC.
5. In connection with the circulation of draft reports and written comments by e-mail, the Chairman requested delegates to make sure that their e-mail addresses were known to the Secretariat.

* * *

1	2
NS0052E1	WCO regional seminars on Customs laboratory matters.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Director informed the Sub-Committee that, in June 2001, the Secretariat had organised a Regional Seminar on HS-related Customs laboratory matters in collaboration with the Japanese Administration and the Kenya Revenue Authority.
2. This was the first regional seminar of its kind and it was judged to be extremely useful and successful by the participating administrations, the host Kenyan Administration and the Secretariat. A copy of the report of the seminar was made available to the delegates at this session of the Sub-Committee.
3. While only a limited number of participating administrations in the seminar actually had Customs laboratories, the benefits of such a laboratory were amply demonstrated by the host administration – Kenya. Kenya not only demonstrated that a developing country could have an excellent laboratory, but could even provide laboratory and technical assistance to other Member administrations in the region.
4. Based on the discussions during the seminar, a basic action plan was recommended for those administrations that have not yet established a Customs laboratory, as detailed in paragraph 5 of Doc. NS0052E1.
5. The Director also informed the Sub-Committee that, based on the success of the Nairobi seminar, the Secretariat intended to organise a second regional seminar, tentatively planned for Brazil, for the Americas region. Although the venue of the seminar had not yet been confirmed by the Brazilian Administration, a regional seminar for the Americas would certainly be realised during the current WCO fiscal year. Financial assistance was available to the participants from the region, but the Secretariat would try to also invite other administrations outside the region that would finance their own participation.
6. Finally, he noted that the last item on the timetable for this session of the Sub-Committee was a discussion on how to better support Customs laboratories in developing Member countries and hoped that there would be active participation by all delegates in that discussion.
7. The Sub-Committee took note of the information presented by the Director.

* * *

1	2
NS0053E1	Development of the WCO Web site in the context of Customs laboratory issues.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Sub-Committee took note of the development of the WCO's Web site, in particular the new Discussion Forum. Responding to the Secretariat's observation vis-à-vis the low level of use of the Forum, delegates indicated that various problems were encountered in this respect, ranging from not having the possibility to access the Internet by individual staff members to not yet having resolved the approach to be taken to the Forum (i.e., should participation be seen as an expression of personal views or should it be first approved internally).
2. One delegate indicated that his administration was close to placing a question on the Discussion Forum and hoped that this would stimulate the use of the Forum.
3. Another delegate informed the Sub-Committee that despite the efforts made during the intersession, the Web site she had been preparing, had not yet been finalized. However, she would contact the Secretariat as soon as it becomes available with a view to preparing a hyperlink to it on the WCO's Web site.
4. In reaction, the Director stressed the informal character of the Discussion Forum and noted that he was more optimistic about its future use, having heard delegates' reactions.

* * *

1	2
NS0054E1 01NL0936	Presentations on how to support Customs laboratories in developing countries.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. The Director explained that Customs laboratories were important to Member administrations in terms of the assessment of Customs duties and other levies, restrictions and prohibitions relating to trade policy and social and environmental concerns, the compilation of trade statistics and for many other reasons. The technical knowledge and experience resident in Customs laboratories was vital to co-ordinating Customs work with other authorities, as well as conducting training and awareness programmes for enforcement officers. However, due to financial and human resource constraints, Customs laboratories did not exist in many developing countries and, where such laboratories did exist, they were often not well equipped. Therefore, in order to better support Member administrations in establishing Customs laboratories or in upgrading and modernising existing laboratories, the Secretariat had undertaken a study of the entire question.
2. According to the preliminary results of the Secretariat's initial survey, the level of the responses was fairly low, but there was a universal recognition of the utility of Customs laboratories and at the same time complaints as to financial, administrative and human resource constraints. Drawing the attention of the Sub-Committee to Article 5 of the HS Convention regarding technical assistance to be provided to developing country administrations, he emphasised that the Sub-Committee should put some efforts into this matter to find appropriate ways and means of assisting the administrations in need.
3. Therefore, the Secretariat's first step was to undertake a survey he described with a view to obtaining an understanding of the situation among Members. Based on the results obtained so far, the survey should be refined and should be periodically updated to provide a list of needs and potential resources to plan future technical assistance activities.
4. The second step the Secretariat had taken was to organise a discussion of this issue in the Sub-Committee. In this connection, he thanked Canada, France, Japan, Kenya and the United States for agreeing to make presentations. However, he also expressed his disappointment, at the absence of international organisations. He noted that the Secretariat had contacted several potential donor organisations and had been turned down by all of them. He believed that these organisations were not aware of the importance of Customs laboratories in ensuring the proper functioning of Customs administrations or of the needs of those laboratories. The Secretariat would bring the discussions of the Sub-Committee on this question to the attention of those organisations as soon as possible.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

5. The Director also pointed out that the WCO Secretariat, within the limits of its resources, was trying to do its best to support Customs laboratories. He explained that the Secretariat :
- (a) could act as a “broker” between administrations needing help and administrations that might be able to provide technical assistance and training;
 - (b) could help laboratories with the analysis of a limited number of samples through the help of a number of developed country laboratories;
 - (c) could provide regional and perhaps even national seminars on Customs laboratory matters (the next regional seminar would take place in Brazil in June 2002);
 - (d) could provide administrations with a free copy of the WCO Customs Laboratory Guide (which would be updated in terms of the 2002 HS shortly, thanks to the Slovak Administration);
 - (e) had been publishing various publications and databases intended to facilitate the use of the HS (e.g., HS Commodity Data Base that contained references to tens of thousands of chemicals);
 - (f) had a Web site containing useful information with regard to Customs laboratories, including a new Discussion Forum within which chemists could exchange informal information with the Secretariat and with their colleagues;
 - (g) had a Fellowship Programme to which administrations could send officers for intensive training;
 - (h) had been providing classification advice to its Member administrations with regard to chemical products; and
 - (i) on occasion, shared used computers and reference books with Member administrations and would continue to do so in the future.
6. However, the Secretariat was not in a position to provide funding for equipment and technical training, but would certainly continue to explore these options with other international organisations.
7. Finally, he invited administrations to begin a dialogue in terms of identifying the needs of administrations and resources available in administrations.
8. With regard to certain confused responses to the Secretariat’s questionnaire, several developed country administrations indicated that they had difficulty in positioning themselves amongst the groups of administrations identified by the Secretariat. They felt that their administrations could not act as a “donor”, since they did not have budgetary allowance to help developing country administrations financially. The Director explained that the questionnaire would be improved.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (contd.)

9. Following the presentations made by Canada, France, Japan, Kenya and the United States, the Sub-Committee agreed that the establishment of a Customs laboratory would not require substantial funding; it could be achieved with a fairly modest investment and a small number of scientific staff.
10. It was noted that certain administrations had already been providing a variety of technical assistance to a number of developing country WCO Members. They had also helped the WCO with the analysis of samples from Members in need.
11. The Sub-Committee also pointed out that the importance of Customs laboratories should be brought to the attention of the individual governments of WCO Members, perhaps through further discussion of Customs laboratory matters in the HS Committee.
12. Mr. S. R. SHEIKH (Human Resources Development Services of the WCO) questioned whether the credibility of Customs laboratories in certain developing country Members could be improved by integrating the “integrity” and “accreditation” aspects into the Sub-Committee’s study. The Chairman appreciated Mr. Sheikh’s remarks and noted that those issues were already under consideration by the Sub-Committee.
13. The Observer for the UNEP stated that, having carefully followed the presentations and the discussions in the Sub-Committee, he now had a better understanding of the goals of the WCO in publishing the aforementioned survey. He stated that the UNEP would be sending its responses to the survey to the WCO Secretariat as soon as possible.
14. Finally, the Sub-Committee agreed with the Secretariat that, as a first step, the needs of developing country administrations and the capabilities of developed country administrations, as well as possible donor international organisations to respond to those needs should be identified through a refined survey as suggested by the Director. An action plan could be developed thereafter.
15. The electronic version of the presentations made by Canada, France, Japan, Kenya and the United States will be placed on the WCO Members Web site in the near future.

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1	2
01NL0929	Presentations on the role of Customs laboratories in the context of social and environmental concerns.

OBSERVATIONS OF THE SCIENTIFIC SUB-COMMITTEE (O. Eng.)

1. Under this agenda item presentations were made by representatives of the CITES, the Chemical Weapons Convention, the Rotterdam Convention and UNEP Secretariats. Each of the presentations underscored the close relationship between the environmental conventions on the one hand and the role of Customs and Customs laboratories, on the other.
2. In his presentation, the Delegate of Japan identified four areas in which Japan's Customs laboratories had played a role with respect to commodities of social and environmental concern, i.e., the analysis of illicit drugs, DNA analytical methodology for certain types of tuna, analysis in the context of the Basel Convention and the analysis of plywood consisting of tropical wood.
3. The presentations will be made available in electronic format via the WCO Members Web site in the near future.

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