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NC1264E1a	Classification of the biological dual-use items of the Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Eng.)

1. After the introduction of the working document NC1264E1a by the Chairperson, the Representative of the Research Group for Biological Arms Control at the University of Hamburg (Germany) (hereinafter "the Research Group"), briefly commented on the non-paper of the Research Group. She stated that the classification of the items listed in Doc. NC1264E1a showed that many items were classified under one and the same subheading. For example, fermenters with different vessel capacities, pass-through sterilization systems and plant inoculation cabinets/chambers providing quarantine would be classified under subheading 8419.89. She continued to state that the classification also showed that a number of items on the list could be classified under different codes. This would introduce an element of uncertainty and could prevent uniform classification. Moreover, the classification of the items listed in Doc. NC1264E1a did not show that many of the HS codes covering the proposed items would also cover a lot of machinery or equipment which was not on the list of items identified by the Research Group. A more specific identification of biological dual use items would facilitate the implementation of national export controls.
2. According to the Research Group, the proposed amendments would facilitate the work of Customs, because if the items which would fall under export control could be identified, the total number of items to be controlled on export could be reduced. The proposal was for the benefit of passive trade monitoring; the Research Group was not after a licensing system or the like. She informed the Committee that the aim of the amendment of the HS was to give the possibility to analyse trade flow, since currently there was little transparency in the biological area.
3. Finally, she brought to the Committee's attention the invitation to attend a Workshop organized by Research Group, which was aimed at, on the one hand, the concept of trade monitoring for biological dual use items and, on the other hand, to exchange experiences on the use of the HS for various monitoring purposes.
4. Several delegates expressed their concern with the procedure, that an initiative of a private organization, which was neither sanctioned nor affiliated with the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BTWC), was apparently being accepted as a proper source for proposed changes of the HS. In the past, in other instances (e.g., the Basel Convention, the Rotterdam Convention, the Montreal Protocol, or the FAO), the proposed changes originated from the sanctioned intergovernmental organization for the related International Agreement or Organization. The request by the Research Group could set precedence to a wide variety of sources and private groups outside governmental or intergovernmental organizations for proposals to amend the HS Nomenclature. Moreover, it was felt that the proposal went beyond the needs of international trade. In this respect, one delegate pointed out that the question of appropriateness of the proposal was a political issue relating to the HS Convention, and the Committee should discuss this question.

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

5. One delegate expressed his concern on the possibility to readily recognize the dual use aspect of the goods and questioned whether it would be appropriate to make the proposed breakouts. The classification of the goods listed in the working document would not be a problem; the problems would rather be whether it would be possible to identify if goods, e.g., fermenters, would be capable of being used for the production of biological weapons afterwards. In his view, the creation of breakouts should be limited to goods which clearly could be used for the production of biological weapons. Another delegate agreed with the speaker, that at the present state, the detection of the goods at issue in international trade was more of a problem, than their classification.
6. Understanding the concern expressed by several delegates, the Chairperson pointed out that the Review Sub-Committee had asked the Committee to give its view on the classification of the items listed in Doc. NC1264E1a, in order to enable the Sub-Committee to consider the consequences of the proposal at its next session in May 2008. In its study, the Sub-Committee would take into consideration the need for specific subheadings as well as the number of breakouts. Instead of deferring the matter to the Committee's next session, as suggested by one delegate, the Chairperson took the view that the consequences of the proposal should be dealt with in the Sub-Committee first. Afterwards, the Committee, at its next session, could consider whether the proposed changes were opportune. Then, he asked the Committee for comments on the classification of the listed items in the working document.
7. In respect of the classification suggested by the Secretariat in column 3 of the table set out in paragraph 5 of Doc. NC1264E1a, one delegate commented on the items listed hereafter, with the observation that his comments did not relate to specific products, but were based on the generic descriptions of the products :
- (i) Regarding the **orbital or reciprocal shakers and shaking incubators**, he opined that subheading 8479.82 would be more appropriate, instead of subheading 8479.89. On the other hand, a second delegate, although not having precise information on specific products, would not consider the temperature control for the growth media and micro-organisms subsidiary, and consequently he was of the view that subheading 8419.89 would also be appropriate. In his view, more information was needed;
 - (ii) In respect of the **drum drying equipment**, he stated that, in addition to the subheadings listed, certain drum drying equipment could be classified under subheading 8479.89, and he suggested adding the subheading to the list would be more appropriate.
 - (iii) On **milling equipment**, he expressed the view that heading 84.37 would be restricted to food type products. He was not opposed to a reference to subheading 8437.80, but the product as described in the list was more of a pharmaceutical type product, a high precision milling, and consequently he was of the view that subheading 8479.82 would be more appropriate;
 - (iv) On **HEPA Filters**, he agreed with the suggested subheading 7019.32. However, he opined that certain HEPA filters might also be covered by other subheadings within heading 70.19, depending on the structure of the filters;
 - (v) On **positive pressure air-fed suits**, he suggested adding subheading 6210.10, considering the possibility that these suits could be made of non-woven material;
 - (vi) On **aerodynamic particle-sizing equipment**, he suggested adding subheading 9031.49 for the equipment of which the operation would be based on optical principles;

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (contd.)

- (vii) On **detection assays for micro-organism and toxins, including immunological and gene probe assays**, he agreed with the Secretariat's comment that more information was needed. In his view, this equipment might not fall under Chapter 90 at all.
8. Concluding the examination of this Agenda Item, the Chairperson again underlined that the classification of the listed items would be an indication only. In light of its work, the Review Sub-Committee could study the validity of the proposal aiming to classify these items in the Nomenclature. The Committee would consider the matter further at its next session, on the basis of the Sub-Committee's report.
9. As a rider to the comments on the listed items, the Representative of the Basel Convention observed that much of the equipment had been used in the atomic energy industry for many years. For the control of biological materials, a parallel could be drawn with radio-active material.

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