

NOTE ON CHAPTER 71:

**Natural or cultured pearls,
precious or semi-precious
stones, precious metals, metals
clad with precious metal and
articles thereof; imitation
jewelry; coin.**

Non-paper drafted by the Division for Africa, Least Developed Countries and Special Programmes of the United Nations Conference on Trade and Development (UNCTAD) in preparation of the AfCFTA 8 Technical Working Group Meeting on Rules of Origin¹

¹ This non -paper does not reflect the views of Member States, nor of the AU Secretariat. It has been drafted using the notes taken during the 7th TWG by the UNCTAD delegation and it simply aims to clarify some technical issues. UNCTAD thanks readers in advance for any corrections or suggestions to further improve its content.

Table of Contents

| | |
|---|----------|
| Table of Contents | 2 |
| Acronyms and Abbreviations..... | 3 |
| 1. Introduction..... | 1 |
| 2. Issue 1: Heading 71.01 | 1 |
| 2.1. Subheadings | 1 |
| 2.1.1. Subheading 7101.10: Natural pearls..... | 1 |
| 2.1.2. Subheading 7101.21: Unworked cultured pearls | 2 |
| 2.1.3. Subheading 7101.22: Worked cultured pearls | 2 |
| 2.2. Technical solutions..... | 2 |
| 2.2.1. Option 1 | 2 |
| 2.2.2. Option 2 | 2 |
| 2.2.3. Option 3 | 2 |
| 2.2.4. Option 4 | 3 |
| 3. Issue 2: Heading 71.02 | 4 |
| 3.1. Heading 71.02 | 4 |
| 3.2. Technical solutions..... | 4 |
| 3.2.1. Option 1 | 4 |
| 3.2.2. Option 1 variant (subheadings 7101.29 and 7102.39) | 5 |
| 4. Issue 3: Heading 71.03 | 5 |
| 5. Issue 4: Chapter 71, Sub-chapter II..... | 5 |
| 5.1. Subheadings | 6 |
| 5.2. Technical solutions..... | 6 |
| 6. Issue 5: Cladding of base metals | 7 |
| 6.1. Technical solutions..... | 8 |
| 7. Issue 6: Heading 71.11 | 8 |
| 7.1. Technical solutions..... | 8 |

Acronyms and Abbreviations

| | |
|---------------|--|
| AfCFTA | African Continental Free Trade Agreement |
| AU | African Union |
| CTH | Change of tariff heading |
| CTSH | Change of tariff sub heading |
| EPA | Economic Partnership Agreement |
| EU | European Union |
| PSRO | Product Specific Rules of Origin |

1. Introduction

Chapter 71 of the Harmonized Commodity Description and Coding System (HS) contains a number of different items. Significantly, it is the first HS chapter dealing with metals. It is important that the product specific rules of origin (PSRO) for metals and metal products establish and maintain a logical and coherent sequencing. Chapter 71 gives rise to a number of issues that are replicated in other chapters dealing with metals and their products.

As rules of origin for the whole of Chapter 71, Member States provisionally agreed on a change in tariff heading (CTH) or manufacture in which the value of all the materials used does not exceed X% of the ex-works price [cost] of the product, with Mauritius and Botswana requesting further consultation.

Chapter 71, Sub-Chapter I is subdivided into five headings:

- (a) 71.01: Natural or cultured pearls and precious or semi-precious stones;
- (b) 71.02: Diamonds, whether or not worked, but not mounted or set;
- (c) 71.03: Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport;
- (d) 71.04: Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport; and
- (e) 71.05: Dust and powder of natural or synthetic precious or semi-precious stones.

The materials in each of Headings 71.01 and 71.02 give rise to different considerations with respect to manufacturing operations as further detailed below.

2. Issue 1: Heading 71.01

2.1. Subheadings

Heading 71.01 is divided into 3 subheadings as follows.

- 7101.10 - Natural pearls*
- Cultured pearls:*
- 7101.21 -- Unworked*
- 7101.22 -- Worked*

2.1.1. Subheading 7101.10: Natural pearls

Goods classified as natural pearls under subheading 7101.10 can be obtained by extraction from an oyster classified under subheading 0307.10. During debate, Member States appeared oriented towards the adoption of a requirement that goods classified under this subheading be wholly obtained or produced.

2.1.2. Subheading 7101.21: Unworked cultured pearls

Cultured pearls of subheading 7101.21 may be obtained by a specific aquaculture process and extraction of the pearls from the oysters.

2.1.3. Subheading 7101.22: Worked cultured pearls

These are pearls from subheading 7101.21 that have been graded, grounded, sawn or drilled and may be temporarily strung for transport. During debate, some Member States were of the view that grading, grounding, sawing, drilling and temporarily stringing for transport were each a substantial transformation, and therefore conferred origin. However, according to the HS structure there is no CTH between worked (7101.21) and unworked cultured pearls (7102.22).

2.2. Technical solutions

Member States which consider that grading, grounding, sawing, drilling or temporarily stringing for transport confers origin may adopt one of the following options as a technical solution.

2.2.1. Option 1

Adopt a PSRO requiring a specific working or processing criterion as contained in the current draft Appendix (the Appendix), drawing from the wording adopted in Economic Partnership Agreements (EPAs) with the EU as follows:

| Subheading | Product description | Working or processing carried out on non-originating materials conferring originating status |
|------------|--------------------------|--|
| 7101.22 | Unworked cultured pearls | Manufacture from unworked, precious or semi-precious stones ² |

2.2.2. Option 2

Adopt a change of tariff subheading (CTSH) criterion for subheading 7101.22.

| Subheading | Product description | Working or processing carried out on non-originating materials conferring originating status |
|------------|--------------------------|--|
| 7101.22 | Unworked cultured pearls | Change of tariff subheading |

The above two options appear to be the simplest. However, for completeness, two other possible options are as follows.

2.2.3. Option 3

The drafting methodology outlined below, used in several EPAs that AU Member States have entered into with the EU. See for example the PSRO for coffee (Heading 09.01).

² It appears clear from the context of this rule that 'stones' should be 'pearls'.

| Subheading | Product description | Working or processing carried out on non-originating materials conferring originating status |
|-------------------|----------------------------|---|
| 7101.22 | Unworked cultured pearls | Manufacture from any heading |

Under this formulation there is no need for a CTH since material from the same heading can be used. However, the working or processing operations carried out on the materials classified under the same heading must go beyond the working and processing listed in Annex 2, Article 7 of the African Continental Free Trade Agreement (AfCFTA).

This option would require an explanatory note in the Appendix as follows: *‘where a rule states that ‘materials of any heading’ may be used, materials of the same heading as the product may also be used, subject, however, to any specific limitations which may also be contained in the rule’.*³

2.2.4. Option 4

It is also possible to use a percentage criterion rule for subheading 7101.22.

| Subheading | Product description | Working or processing carried out on non-originating materials conferring originating status |
|-------------------|----------------------------|---|
| 7101.22 | Unworked cultured pearls | Manufacture in which the value of all the materials used does not exceed X % of the ex-works price of the product |

If all Member States by consensus consider that the above working or processing confers origin, a similar rule would need to be adopted for natural pearls because similar processes can be carried out on natural pearls. The EU EPAs are adopting PSRO which encompass natural and cultured pearls, as illustrated below.

| Heading | Product description | Working or processing carried out on non-originating materials conferring originating status |
|----------------|--|---|
| Ex 7101. | Natural or cultured pearls, graded and temporarily strung for convenience of transport | Manufacture in which the value of all the materials used does not exceed 50% of the ex-works price of the product |

³ See note 3.3 of the introduction to list II of the SADC-EU EPA.

3. Issue 2: Heading 71.02

3.1. Heading 71.02

Member States have engaged in discussions about the working or processing requirements under the different subheadings of Heading 71.02 (Diamonds), which are as follows.

7102.10 - Unsorted

- Industrial:

7102.21 -- Unworked or simply sawn, cleaved or bruted

7102.29 -- Other

- Non-industrial:

7102.31 -- Unworked or simply sawn, cleaved or bruted

7102.39 -- Other

Subheading 7102.10 covers unsorted diamonds that are extracted through mining and sorted in lots. After they have been sorted by diamond experts as described in the HS explanatory notes, the diamonds can be classified as industrial under subheading 7102.21 or as non-industrial under subheading 7102.31. Some working or processing operations such as simple cutting, cleavage and chemical polishing do not generate a CTH or even a CTSH. Similarly to Issue 1, Member States which consider that these operations confer origin may adopt as a technical solution one of the options in section 3.2.

Subheadings 7102.29 and 7102.39 cover polished, drilled diamonds that have been the object of working or processing to make them suitable for industrial or non-industrial use. There is no change of tariff heading, but there is a change of tariff subheading (from subheadings 7102.21 and 7102.31 respectively). Member States which wish to recognize that the working and processing carried out in each of these subheadings confers origin may adopt as a technical solution one of the options in section 3.2.

3.2. Technical solutions

One of the simplest technical solutions that can be borrowed from EPAs is as follows.

3.2.1. Option 1

Adopt a PSRO using a specific working or processing criterion as contained in the Appendix, drawing from the wording adopted in EPAs with the EU as follows.

| Subheading | Product description | Working or processing carried out on non-originating materials conferring originating status |
|-------------------|---|---|
| 7102.21 | Unworked or simply sawn, cleaved or bruted (Industrial) | Manufacture (<i>or sorting</i>) from unworked precious or semi-precious stones |
| 7102.29 | Other (Industrial) | Manufacture (<i>or sorting</i>) from unworked precious or semi-precious stones (or change of tariff subheading) |
| 7102.31 | Unworked or simply sawn, cleaved or bruted (Non-Industrial) | Manufacture from unworked precious or semi-precious stones |

| | | |
|---------|------------------------|--|
| 7102.39 | Other (Non-Industrial) | Manufacture from unworked precious or semi-precious stones (or CTSH) |
|---------|------------------------|--|

3.2.2. Option 1 variant (subheadings 7101.29 and 7102.39)

As a variant to Option 1, Member States could insert a CTSH and add the process of sorting diamonds from subheading 7102.10. This variant would only be available as an option for subheadings 7102.29 and 7102.39.

4. Issue 3: Heading 71.03

There have also been discussions among Member States about the PSRO for Heading 71.03 (Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport).

Heading 71.03 is divided into the following subheadings:

- 7103.10 - Unworked or simply sawn or roughly shaped*
- Otherwise worked:*
- 7103.91 -- Rubies, sapphires and emeralds*
- 7103.99 -- Other*

A number of working or processing operations carried out under Heading 71.03.10 such as working by sawing (e.g., into thin strips), cleaving (splitting along the natural plane of the layers) or bruting, i.e., stones which have only a provisional shape and clearly have to be further worked. The strips may also be cut into discs, rectangles, hexagons or octagons, provided all the surfaces and ridges are rough, matt and unpolished.⁴ None of these operations, alone or together, generate a CTH or a CTSH. Member States considering that such working or processing confers origin may adopt the technical solutions set out at sections 2.2.1 and 3.2.1 above, i.e. PSRO at sub-heading level 7103.10 based on a specific working or processing requirement as currently contained in the Appendix: Manufacture from unworked, precious or semi-precious stones.

Subheadings 7103.91 and 7103.99 classify worked stones that have been polished or drilled, engraved stones (including cameos and intaglios) and stones prepared as doublets or triplets. As in the case of heading 7103.10, delegations that are of the view that polishing and drilling stones are origin conferring operations may wish to adopt one of the technical solutions envisaged in sections 2.2.1 and 3.2.1 above. In the specific case of these subheadings, a CTSH rule may be engaged for subheading 7103.10 to subheadings 7103.10 or 7303.99.

Upon request UNCTAD could develop further technical options and/or clarify the issues at stake with respect to Heading 71.03.

5. Issue 4: Chapter 71, Sub-chapter II

A series of rather complex issues and considerations raised by Member States during discussion of this subchapter apply to the whole of Sub-chapter II, which classifies precious metals and articles thereof,

⁴ See HS explanatory notes .

imitation jewelry, and coin. These issues are systemic and occur in many metals chapters. For the sake of brevity only the major issues are discussed. Further clarification can be provided upon request.

5.1. Subheadings

Heading 71.06 comprises silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form. The heading is subdivided into 3 subheadings as follows:

7106.10 - Powder:
- Other:
7106.91 -- Unwrought
7106.92 -- Semi-manufactured

Heading 71.08 (gold) has a similar HS structure:

71.08 Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form
-Non-monetary:
--7108.11 Powder
--7108.12 Other unwrought forms
--7108.13 Other semi-manufactured forms
- 7108.20 -Monetary

Heading 71.10 (platinum) also follows a similar HS structure:

71.10 Platinum, unwrought or in semi-manufactured forms, or in powder form.
- Platinum:
7110.11 -- Unwrought or in powder form
7110.19 -- Other
- Palladium:
7110.21 -- Unwrought or in powder form
7110.29 -- Other
-Rhodium:
7110.31 -- Unwrought or in powder form
7110.39 -- Other
-Iridium, osmium and ruthenium:
7110.41 -- Unwrought or in powder form
7110.49 -- Other

In summary, under Chapter 71 precious metals may be (a) unwrought, (b) in powder or (c) in semi-manufactured forms.

A technical difficulty arises because a certain amount of working or processing may be carried out without a change of tariff heading. During the discussions, a number of delegations considered that this matter needed to be more thoroughly considered.

5.2. Technical solutions

A number of working or processing operations may be captured as mentioned in the analysis of previous issues by introducing a CTS rule. For example, in the case of platinum, the adoption of a CTS rule would allow the making of powders of silver of subheading 7106.10 from unwrought silver

of subheading 71.06.91 and the making of semi manufactured items like foils, tubes and pipes of silver of subheading 7106.91 from unwrought silver of heading 7106.92.

However, a CTSH rule may not cover all working or processing operations that may be undertaken within a subheading like subheading 7106.91 (unwrought precious silver). In fact, both alloys of precious metals and the electrolytic separation of precious metals remain classified under the same subheading. Both processes of making alloys and electrolytic separations are industrial processes in metallurgy.⁵

The manufacture of unwrought alloys requires at least the following operations:

- (a) weighing the pure metals to respect the proportions specified depending on the uses for which the alloys are intended;
- (b) melting and mixing under extremely strict conditions (temperature control or working under vacuum); and
- (c) analysis to check homogeneity or absence of impurities.

The processes for obtaining powders are crushing and atomization.

Delegations interested in conferring origin for these different processes may consider the technical solution outlined below that is excerpted from the EPA text. Alternatively, UNCTAD could provide other technical solutions. The technical difficulties in Heading 71.06 are also encountered, albeit with some differences, in Headings 71.08, 71.10 and 71.11. A complete set of technical options may be proposed once delegations have reflected upon the various origin conferring processes as listed above.

| | Product description | Working or processing carried out on non-originating materials conferring originating status | Working or processing carried out on non-originating materials conferring originating status (Alternative PSRO) |
|---------------------|--------------------------------------|---|--|
| 7106, 7108 and 7110 | Precious metals | | |
| | -Unwrought | Manufacture from materials not classified within heading No 7106, 7108 or 7110 | Electrolytic, thermal or chemical separation of precious metals of heading No 7106, 7108 or 7110 Or Alloying of precious metals of heading No 7106, 7108 or 7110 with each other or with base metals |
| | -Semi-manufactured or in powder form | Manufacture from unwrought precious metals | |

6. Issue 5: Cladding of base metals

Discussions have been ongoing among Member States regarding:

- (a) Heading 71.07 (Base metals clad with silver, not further worked than semi-manufactured);

⁵ See https://www.911metallurgist.com/blog/electrolytic_refining and <http://www.uefap.com/reading/exercise/ess3/alex2.htm>.

- (b) Heading 71.09 (Base metals or silver, clad with gold, not further worked than semi-manufactured); and
- (c) Heading 71.11 (Base metals, silver or gold, clad with platinum, not further worked than semi-manufactured).

6.1. Technical solutions

The process of ‘cladding’ consists of, among other things, soldering, brazing and/or hot rolling base metals with precious metals. Those delegations that recognize the process of cladding may apply either a CTSH or a rule as follows: *Manufacture from metals clad with precious metals, unwrought*. The latter drafting of the rules reflects the PSRO contained in the EPAs with the EU as reproduced below.

| | Product description | Working or processing carried out on non-originating materials conferring originating status |
|------------------------------|---|--|
| Ex 7107, ex 7109 and ex 7111 | Metals clad with precious metals, semi-manufactured | Manufacture from metals clad with precious metals, unwrought |

7. Issue 6: Heading 71.11

Heading 71.11 covers ‘*Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal*’.

Headings classifying waste and scrap have been the object of debates during the 7th TWG negotiations. Many delegations expressed the view that the definition of wholly obtained as contained in paragraph 1, Annex 2, Article 5 of AfCFTA:

- (j) *used articles fit only for the recovery of Materials, provided that such articles have been collected therein;*
- (k) *scrap and waste resulting from manufacturing operations therein;*

Member States are yet to achieve a definitive consensus about the origin of waste and scrap of various headings.

7.1. Technical solutions

A possible formulation for a technical solution could be as follows: *The origin of the goods shall be the country in which the waste and scrap of this heading are derived from manufacturing or processing operations of consumption.*