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CLASSIFICATION OF HIGH FAT CREAM CHEESE AND POSSIBLE CREATION OF A
DEFINITION OF CHEESE OF HEADING 04.06

(Item II.13 on Agenda)

Reference documents :

41.475 (HSC/20)
41.600, Annex G/23 (HSC/20 – Report)
42.040 (HSC/21)
42.056 (HSC/21)
42.113 (HSC/21)
42.100, Annex H/1 (HSC/21 – Report)
42.438 (HSC/22)
42.727 (HSC/22)
42.750, Annex G/12 (HSC/22 – Report)
42.805
42.827

1. On 27 January 1999 the Secretariat received further comments from Australia concerning the classification of high fat cream cheese.
2. The most important parts of the comments are reproduced in the Annex to this document. Due to their late arrival, the comments are only reproduced in the English language.
3. The Sub-Committee is invited to take note of the Australian comments.

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Australian Notes for WCO Scientific Sub-Committee on the issues raised in Doc.42.805E

**“CLASSIFICATION OF HIGH FAT CREAM CHEESE AND POSSIBLE CREATION
OF A DEFINITION OF CHEESE OF HEADING 04.06”**

A) TERMS OF REFERENCE

1. The Australian Administration notes that the Scientific Sub-Committee has been asked to examine eight questions. Our specific comments in respect of each of the questions are as follows.

(i) Whether cheese could be a water-in-oil type emulsion and, if so, how to make a distinction between water-in-oil type dairy spreads and water-in-oil emulsion type cheese.

2. Head Note 2(b) of Chapter 4 of the Customs Tariff notes that “Dairy Spreads means a spreadable emulsion of the water-in-oil type . . .” This means that for a product to be a dairy spread it must always be a water-in-oil type emulsion. If there is any oil-in-water particles present then it must, by definition, be something other than a dairy spread.

3. Cheese, however, may be water-in-oil but is more likely to be a mixture of this and other phases of water and oil. (Refer to paragraphs 17 through 22 of the Annex to Doc. 42.438 E) If any state other than water-in-oil exists then it is not a dairy spread but could be a cheese.

4. The Australian Administration is not aware of any internationally recognised test of the state of the phase of water and oil emulsions in cheeses.

(ii) Meaning of coagulation in the context of production of cheese and whether heating is regarded as a coagulating agent

5. There is a body of discussion which concludes that heat treatment is an acceptable coagulating agent. In advice for discussion at the IDF Group D31 (Definitions and Standards for Cheese) meeting in Toronto on 5 November 1998, the IDF stated that “There are no specific methods developed to check whether coagulation has occurred. Coagulation is a very broad term, which also would include flocculation (eg fermented milks). Coagulation can be achieved by lowering pH (microbiological fermentation or chemical acidification) or by heating the milk.”

6. It is also not strictly correct in describing the coagulation method for this product as simply ‘heat’. It is more accurately described as ‘thermal methods’ involving a combination of varying temperatures and conditions to effect coagulation, with removal of whey facilitating concentration of milk solids, and homogenisation. Moreover it must be noted that some manufacturers use rennet as the agent of coagulation.

(iii) Whether the protein content was a determining factor for cheese

7. Codex does not attempt to classify product according to protein levels. Recent discussions at the IDF have suggested that protein may be a necessary factor in coagulation. This discussion does not, however, conclude that the protein which may have been available at the time of coagulation will remain in the final product. Indeed the wheying off process frequently involves a reduction in the protein level (although this might not be the case if ultrafiltration techniques have been employed). As this occurs the amount of protein in the final product will be in direct inverse proportion to the occurrence of other components. If the final product has a high fat content it must by definition have a low protein content irrespective of the amount of protein that was available in the vat at the time of coagulation.

(iv) The maximum level of fat content on dry basis allowed for cheese products

8. There exists a wide range of cheese products. Where appropriate, the IDF and Codex have defined products on the basis of minimum fat levels. Not even for specific varieties, however, has the IDF or Codex ever stipulated maximum fat levels. This has never been, and nor should it be, a factor in determining whether a product is cheese.

(v) Water/protein ratio

9. This is not relevant to defining cheese. In part (ii) of para 4 of Doc. 42.727E the Japanese administration has put forward the hypothesis that this may be a measure of the degree of coagulation. We are not aware of any scientific basis for this statement.

(vi) Whether the products at issue met the criteria for dairy spreads set out in Note 2 (b) to Chapter 4.

10. As outlined in paragraphs 2 to 4 above, this could only be the case if the products are always a water-in-oil type emulsion. The Japanese administration has noted in paragraphs 2 and 9 of Doc. 42.727E that for at least two of the three products they have tested the phase has been variable. These products could not, therefore, fall under the definition of dairy spreads. More importantly, they clearly meet the definition within Chapter 4 Note 3 and must, therefore, be classified as cheese in 0406.

B) COMMENTS ON SECRETARIAT PAPER 42.805E

11. Reference documents. On receipt of Doc. 42.727E just prior to the November 1998 HSC meeting the Australian administration prepared a response to the points raised by Japan. As there was not sufficient time to circulate the paper formally, it was provided to delegates prior to or at the meeting. For the purpose of completeness a copy of that paper is attached.

12. Paragraph 2 states that *The products in question are used as a replacement for cream or butter.* This assertion is somewhat misleading. While it is true that the products in question sometimes have similar applications to other dairy and non dairy food products, these specific cheeses are required by end users because of the specific functionality that they bring to the manufacture of specific end products. They are in fact used for purposes similar to those for normal or double cream cheese. It could be argued that cream or butter are sometimes used as inferior substitutes for these.

13. The Australian Administration accepts the analytical results set out in the table in paragraph 2. It is noted, however, that only three samples (all from Australia) are mentioned.

14. Paragraph 3 states that *according to information submitted* the products are manufactured according to one specific process. This is incorrect. Manufacturers employ different techniques to produce the product (refer paragraph 4 of Doc. 42.056E and paragraph 8 of the Annex to Doc. 42.438E).

15. To our knowledge "high fat cream cheese" like products are produced by at least five companies in Australia, two in Hungary, two in the United States and possibly one each in the United Kingdom and New Zealand. Each of these would have their own unique process and many would have more than one process to meet the varying requirements of end users. Some

examples of processes which could produce the results described are set out in the flow charts attached. (*Will be available in the meeting room*).

16. Paragraph 5 notes that the IDF concludes that the products are cheese *if they have a texture comparable with that of semi solid products*. This fact was demonstrated at the HSC meeting on 21 March 1998. Paragraph 5 of Annex H/1 to Doc 42.100 notes that "The samples presented were not frozen and were solid". It does therefore meet the IDF's requirement to be defined as cheese. While these cheese are usually shipped in frozen form, they remain in a solid state for more than 48 hours at room temperature. This is a significant difference between these cheeses and dairy spreads.

17. Paragraph 6 (a) *the manufacturing process of HFC would not satisfy the provisions of CODEX standards*. This is not correct. The manufacturing process of the product does satisfy the CODEX standards. (Refer paragraphs 5 and 6 of Doc. 42.056 and paragraphs 1 to 8 of the Annex to Doc. 42.438E). Codex defines cheese as follows.

"Cheese is the fresh or matured solid or semi-solid product obtained by:

- (a). coagulating wholly or partly the following raw materials: milk, skimmed milk, partly skimmed milk, cream, whey cream, or butter milk, or any combination of these materials, through the action of rennet or other suitable coagulating enzymes, and by partially draining the whey resulting from such coagulation: and/or
- (b). processing techniques involving coagulation of milk and/or materials obtained from milk which give an end-product which has similar physical, chemical and organoleptic characteristics as the product defined under (a) above."

18. High fat cream cheese is a fresh semi-solid to solid product. It is made by the coagulation of milk products. Coagulation can be done through the action of rennet. Whey resulting from the coagulation is drained off. In these circumstances it is completely compatible with part (a) of Codex. However, it is more economic to make the product using thermal coagulation. The resulting product has the same characteristics as the product defined in (a). In this case (which accounts for most high fat cream cheese manufacture) the product fully meets the requirements of part (b). It has been suggested that these products do not have the same "physical chemical and organoleptic characteristics" as the products made under (a). Observation, expert and trade advice will clearly show that they do have the required characteristics.

19. The Australian position is that CODEX (and through it the IDF) are the most appropriate body to determine such definitions and that compliance with CODEX is paramount.

20. Paragraph 6 (b) states that *the protein content of HFC was too low for coagulation of cheese to construct a protein structure which is necessary for trapping fat globules to make a stable mass*. Whether or not protein is a necessary element for coagulation to occur is an issue still being debated within the IDF. To date the discussions have been inconclusive. This is, however, irrelevant because even if it is stipulated that protein is necessary for coagulation to occur it is still a wide leap of logic to assume that all of the protein will still be in the final product after wheying off.

21. Paragraph 6 (c) *the fat content of the products in question was very high*. We agree that it is high. We do not, however, agree that this is a criterion for defining it as something other than what it is - cheese.

22. *the products were not classifiable in heading 04.06 since they were more or less similar to dairy spreads of heading 04.05.* “More or less” is not the issue here. They do not always meet the requirement of being a water-in-oil type emulsion and as such can not be classified under heading 04.05. Paragraphs 12 and 13 of Doc. 42.438 provides the distinction between dairy spreads and cheese.

23. Paragraph 6 (d) *Japan, however, did not wish that the well-known cheese such as Mascarpone be reclassified.* If “high fat cream cheese” is reclassified such a reclassification of other cheeses is inevitable. The Australian administration has some difficulty with the generic term “high fat cream cheese”. The product under question is also traded under such descriptions as triple mascarpone, double mascarpone, triple cream cheese and neufchatel. These, and other varieties of high fat cheese, could be affected by any reclassification of “high fat cream cheese”.

24. Paragraph 11 quotes John Stauffer (edited by YH Hui) that *all cheese products are oil/water emulsions . . .* We agree with the statement that all cheeses are an emulsion of oil and water and believe that this is what Mr Stauffer means. In this article, Mr Stauffer is not attempting to determine whether cheeses are water-in-oil or oil-in-water type emulsions. He is simply saying that the emulsion is of water and oil. As the particular section is discussing the role of pasteurisation, there would have been no reason for Mr Stauffer to differentiate between the various states to make his point and nor has he done so.

25. Paragraph 14 *heat is not mentioned as one of the coagulants in cheese making in any of the literature consulted by the Secretariat.* Prior to the November 1998 meeting the Australian administration gave the Secretariat a copy of the IDF Group D31 paper referred to in paragraph 5 above. In this regard, however, it is important to note:

- a) the correct description of the process for these products is usually “thermal” (ie varying temperatures) rather than “heat”
- b) the product can also be made using rennet and so could meet part (a) of the Codex definition. It is only in applying part (b) where the “other techniques” referred to are in this case “thermal treatment”.

26. Paragraph 17. *The above indications seem to suggest that the lower the amount of protein in cheese the softer it will be.* This conclusion can not be drawn from the preceding paragraphs and is indeed incorrect. It is also irrelevant as the hardness of the product is not in question. The HSC has agreed that it is solid.

27. Paragraph 19. It is not clear what this paragraph means or what the reference to “w/o” is about. If it means that proteins are necessary for the formation of cheese then this is something which is currently being debated within the IDF (see paragraph 20 above). Moreover, this is irrelevant to the protein level of the resulting product. Protein levels are not mentioned in CODEX, nor are they mentioned in Chapter 4 Notes 2 or 3.

28. Paragraphs 22 to 24. It is difficult to understand the relevance of this. The article from YH Hui referred to does not attempt to make any statements about the relevance of the protein/water ratio in cheese, it only talks about the relationship between milk proteins and water generally.

29. Paragraph 25 second sentence. *The products in question seem to be spreadable (non-solid).* The products are usually spreadable but as most cream cheeses and other soft cheeses are spreadable this is not an issue. It is incorrect, however, to describe the product as “non-solid”. That the product is solid was established by the HSC in March 1998 (see paragraph 16 above).

30. Paragraph 25 last sentence. *The main question to be considered, therefore, is whether or not the products at issue are water-in-oil emulsions.* See paragraphs 2 to 4 above and, as noted in paragraph 10 above, the Japanese analysis has determined that two of the three products tested have phases other than water-in-oil. The “main question” has been answered.

31. Annexes. The Australian administration agrees that the annexes are a fair representation of the information provided by the IDF and Australia. We note in reference to the last sentence of the IDF annex, however, that it should be borne in mind that the Codex standards are almost always in draft form. As soon as they are agreed they are again subject to revision. It is necessary for this process to be dynamic to ensure that the definitions keep in step with new technologies and new products as they come on to the scene.

32. Notwithstanding all of the above, it is expected that most trade in high fat cream cheese will be below the 72% fat level (plus or minus a tolerance of 2%). While this decision has been taken at the commercial level by manufacturers in response to changing demand from Japanese customers, the Australian Government does not believe that a case has been made for regulations setting additional physical limitations on product which is legitimately manufactured as cheese.

33. Australia does not favour distinctions based on fat content, nor on protein levels – these are matters that should be determined by IDF and CODEX, but IF a distinction was thought necessary it should be based on advice from the IDF.

C) CONCLUSION

34. There have been many issues raised in the discussion on these products. Many of these issues are not relevant to the matter under consideration which is – are these products cheese? The answer to that question is “yes”. These goods are regarded by the sole international expert body (the IDF) as cheese – see Doc. 42.040 paragraph 12. The products meet the definition of cheeses as provided by the international definition in CODEX. The products comply with Chapter 4 Note 3 and must therefore be classified as cheese.
