



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0211E1

-
25th Session
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O. Eng.

Brussels, 8 February 2002.

POSSIBLE AMENDMENTS TO NOMENCLATURE
REGARDING THE CLASSIFICATION OF WAFFLES

(Item III.A.1 on Agenda)

Reference documents :

NC0069E1 (HSC/23)	NC0384E1 (HSC/27)
NC0127E1 (HSC/24)	NC0422E1 (HSC/27)
NC0146E1 (HSC/24)	NC0430E2, Annex H/1 (HSC/27 – Report)
NC0160E2, Annex G/8 (HSC/24 – Report)	NC0466E1 (HSC/28)
NC0283E1 (HSC/26)	NC0510E2, Annex G/5 (HSC/28 – Report)
NC0340E2, Annex G/1 (HSC/26 – Report)	

I. BACKGROUND

1. At its 23rd Session (May 1999) the Harmonized System Committee exchanged preliminary views on the classification of “Kellogg’s Breadia” bakers’ wares (a kind of “waffles”), on the basis of Doc. NC0069E1.
2. After a short exchange of views, the Committee concluded that this classification issue should be settled at its next session in October 1999. On that basis, the Committee could decide what further action should be taken with regard to the legal texts and/or the Explanatory Notes.
3. At its 24th Session in October 1999, the Harmonized System Committee re-examined the classification of the waffles in question. After discussion, the Committee decided (by 18 votes to 10) to classify the waffles presented by Japan in Doc. NC0069E1 in subheading 1905.30 (by application of GIR 1).
4. By its letter of 21 December 1999, the EC asked the Secretary General of the WCO to refer the Committee’s decision to the Council, in accordance with the provisions of Article 8.2 of the HS Convention.

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5. The Council, at its 95th/96th Sessions in July 2000, considered the EC reservation and it decided to refer the question of the classification of bakers' wares (waffles) back to the Committee for re-examination.
6. At its 26th Session in November 2000, questions were raised as to the composition of the waffles at issue. The Committee therefore, after discussion, agreed to postpone final discussion of this Agenda item until its next session. In the meantime, the Japanese Administration would carry out the necessary laboratory analysis as to the water content if it could obtain samples of the waffles in question. The Secretariat was asked to contact the manufacturer to obtain information on the exact composition (including the water content) of the product after it had been baked, but before being frozen.
7. At its 27th Session (May 2001), in view of the fact that "Kellogg's Breadia" waffles were no longer manufactured, the Committee decided not to pursue the classification of this product. This decision was in line with the views of the enquiring administration (Japan) and the administration (the EC) which had entered the reservation. As a replacement for this classification issue, the Committee agreed to classify a comparable waffle product ("Kellogg's Eggo Frozen Waffles") at its next session. Furthermore, the Committee agreed that a decision should also be taken at the next session with regard to possible Explanatory Notes and/or legal text amendments.
8. At the 28th Session of the HS Committee (November 2001), the US Delegate emphasised that the Committee had been discussing the classification of these products since its 23rd Session (May 1999). Referring to his administration's comments in Doc. NC0466E1, he underlined that "Kellogg's Eggo Frozen Waffles" were fully baked, and that this fact was clearly shown in the illustrations in the Annex to the working document. It was certainly not a batter, as one delegate had suggested during a previous discussion in the Committee with regard to classification of a similar product. Furthermore, he emphasised the fact that there were no standards, international or national, on the water and moisture content for waffles. Since the product at issue was commercially and commonly known as a waffle, presented and traded internationally as a waffle, known by and purchased by consumers in retail stores as a waffle and satisfied the common definition of a waffle (i.e., a bakers' ware baked between patterned metal plates), it should be classified in the Harmonized System as a waffle in subheading 1905.32, regardless of the water content limit relating to waffles in the Explanatory Note to heading 19.05.
9. Many delegates supported his view. In this regard it was pointed out that an Explanatory Note could not function to narrow or broaden the scope of a heading or a subheading. It would seem very strange not to classify this product as a waffle, since it was presented, was traded and tasted like a waffle. It was also mentioned that dietary concerns and eating habits had changed since the preparation of this Explanatory Note, meaning that an elevated water content (and a resulting reduced fat content) was more common in such products than before.
10. On the other hand, many other delegates were of the view that a product containing 45 % water after deepfreezing could not be classified as a waffle. Products containing 10 – 13.7 % water, as referred to in paragraph 25 of the working document, should be classified as waffles (and the Explanatory Notes should be amended accordingly), but 45 % water was too much. In their mind, a product containing so much water had lost the nature of being a waffle. It was also stressed that classifying products by their name or their shape was not a

normal practise in the Harmonized System. Classification had to proceed on the basis of the nature of the product.

11. One delegate indicated the contention that there was no limit on the water content of waffles would endanger the distinction made in the HS Nomenclature between the various bakers' wares, such as pastries, cakes, biscuits and waffles. After all, water content was an important criterion which determined how crisp or soft a product was. This was significant, as the new nomenclature differentiated between, inter alia, biscuits and waffles. The Committee also instructed the Secretariat to prepare a document for the next session of the Review Sub-Committee with regard to legal text amendments. These amendments should be based on proposals from Contracting Parties to be submitted as early as possible.
12. One delegate pointed out that the Explanatory Note to heading 19.05 also contained water content limits with regard to other products, such as crispbread and sweet biscuits. He could agree to insert a legal Note as to the water content limit for such products, but as the texts now stood the product at issue had to be classified in subheading 1905.90.
13. After further discussion, the Committee finally decided to classify "Kellogg's Eggo Frozen Waffles" in subheading 1905.90, by 17 votes to 15. After an additional exchange of views, it was agreed that the basis for this decision was GIR 1 and the composition of the product (including the 45 % water content).
14. In order to reflect this decision, the Committee instructed the Secretariat to prepare the following for examination by the next preessional Working Party :
 - (a) a draft Classification Opinion;
 - (b) a draft amendment to the Explanatory Note to heading 19.05, on the basis of the EC proposal in paragraph 34 to Doc. NC0283E1, that would ensure that the products mentioned in paragraph 25 to Doc. NC0466E1 would be classified as waffles. Contracting Parties were invited to submit their proposals in this connection.
15. The Committee also instructed the Secretariat to prepare a document for the next session of the Review Sub-Committee with regard to possible legal text amendments. These amendments should be based on proposals from Contracting Parties to be submitted as early as possible.
16. By its letter of 12 December 2001, the Secretariat invited interested administrations to submit their comments and/or proposals with regard to this issue.

II. SECRETARIAT COMMENTS

17. At the time of preparation of this document, the Secretariat has received no comments or proposals. However, since the Secretariat is of the view that the situation should be improved for the future, and in view of the HSC's latest decision, it believes that a water content criterion applicable to waffles should be inserted in the legal texts. Based on the HS Committee's latest decision with regard to "waffles", the Secretariat would like to submit the following proposal :

(a) Delete the phrase “The water content must be 10 % or less by weight of the finished product.” from the Explanatory Note to heading 19.05, Item (9) (page 163);

(b) Insert the following new Subheading Note to Chapter 19 :

“Subheading 1905.32 does not apply to waffles or wafers with a water content exceeding [20 %] by weight (subheading 1905.90).”

An alternative solution could be to amend the subheading texts as follows :

“- Sweet biscuits; waffles and wafers with a water content not exceeding [20 %] by weight :

1905.31 - - Sweet biscuits

1905.32 - - Waffles and wafers with a water content not exceeding [20 %] by weight”.

18. The Secretariat is aware that the waffles presented to the HS Committee had an average water content between 10 and 13.7 %, but since one delegate, at the HS Committee’s 26th Session, informed the Committee that their findings as to the water content in waffles varied from 12 % to 17 % (see Doc. NC0340E2), the Secretariat has proposed a 20 % limit, but leaves it to the Sub-Committee to agree on this limit.

19. As pointed out in Doc. NC0069E1 (paragraph 17) and in Doc. NC0466E1 (paragraph 30, last part), the Explanatory Note to heading 19.05 also contains other water content limits, see Item (A) (4) defining “crispbread” and Item (A) (8) (b) defining “sweet biscuits”. In addition, Item (A) (8) (b) also contains provisions for the “base” (50 %) and the “fat content” (35 %). Based on the conclusion of the discussion as to the water content with regard to waffles above, the Secretariat could prepare a working document for the Sub-Committee’s next session with its proposals in this respect.

III. CONCLUSION

20. The Sub-Committee is invited to examine the alternative proposals put forward by the Secretariat in paragraph 17 above taking into account the comments made by the Secretariat in paragraphs 18 and 19 above.
