



WORLD CUSTOMS ORGANIZATION  
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council  
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HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
26<sup>th</sup> Session  
-

NR0271E1  
(+ Annex)

O. Eng.

Brussels, 10 July 2002.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE  
REGARDING THE CLASSIFICATION OF WAFFLES

(Item III.A.1 on Agenda)

Reference documents :

NC0069E1 (HSC/23)	NC0422E1 (HSC/27)
NC0127E1 (HSC/24)	NC0430E2, Annex H/1 (HSC/27 – Report)
NC0146E1 (HSC/24)	NC0466E1 (HSC/28)
NC0160E2, Annex G/8 (HSC/24 – Report)	NC0510E2, Annex G/5 (HSC/28 – Report)
NC0283E1 (HSC/26)	NR0211E1 (RSC/25)
NC0340E2, Annex G/1 (HSC/26 – Report)	NR0265E3, Annex C/1 (RSC/25 – Report)
NC0384E1 (HSC/27)	

I. BACKGROUND

1. At its 23<sup>rd</sup> 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 24<sup>th</sup> 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).

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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.
5. The Council, at its 95<sup>th</sup>/96<sup>th</sup> 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 26<sup>th</sup> 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 27<sup>th</sup> Session (May 2001), in view of the fact that "Kellogg's Bredia" 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 its 28<sup>th</sup> Session in November 2002, the Harmonized System Committee examined the classification of "Kellogg's Eggo Frozen Waffles". After discussion, the Committee decided (by 17 votes to 15) to classify the product in subheading 1905.90. It was agreed that the basis for this decision was GIR 1 and the composition of the product (including the 45 % water content).
9. In order to reflect this decision, the Committee instructed the Secretariat to prepare the following for examination by the next pre-session 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.
10. 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.
11. By its letter of 22 January 2002, the United States Customs Service asked the Secretary General of the WCO to refer the Committee's decision to the Council for referral back to the HS Committee for re-examination, in accordance with the provisions of Article 8.2 of the HS Convention.

12. At its 25<sup>th</sup> Session (March 2002), one delegate called attention to the fact that the Sub-Committee was not here to classify waffles but to discuss possible amendments to the legal texts which could make it easier to classify such goods in the future. He was of the opinion that the Secretariat's two alternative proposals in paragraph 17 of Doc. NR0211E1 formed a good basis for discussion. In this connection, he was of the view that a specific subheading for waffles containing 20% or more water could also be incorporated in this proposal. Accordingly, he could agree with the proposed water content limit (20%). He emphasized that bakers' wares were produced all over the world, and that a product which was regarded as a waffle in one part of the world was not necessarily regarded as a waffle in another part of the world. He was therefore of the opinion that an objective criterion, such as water content, should be kept in the definition of waffles, and that this should be provided at legal level.
13. Another delegate preferred to wait for the HS Committee's final decision with regard to the classification of "Kellogg's Eggo Frozen Waffles" before expressing a final view as to whether legal amendments were necessary or not. He recognised the fact that the HS Committee had previously decided to insert new subheadings for specific products in the high-tech area of the Harmonized System before a final classification decision had been taken; however, in his view it was risky to insert specific water-content limits in the legal texts for waffles, since the HSC's reconsideration of the classification issue could make the matter moot, if, in fact, the Committee were to decide that all waffles were currently classifiable in the same subheading.
14. After this preliminary exchange of views, the Chairman concluded that this issue should be discussed at the Sub-Committee's next session on the basis of a new document containing the alternative proposal referred to above and any further comments to be submitted by administrations.
15. Referring to paragraph 19 of the working document, the Director pointed out that the Explanatory Note to heading 19.05 also contained other water content limits and provisions for the "base" and "fat content". He wondered whether the Sub-Committee should look into these provisions at this stage or later - after the water content issue with regard to waffles had been resolved.
16. After a short exchange of views, it was decided that the Sub-Committee should also look into this problem in the future on the basis of the comments presented at its 25<sup>th</sup> Session and any other comments which the Chairman strongly encouraged administrations to submit.

## II. SECRETARIAT COMMENTS

17. By the time of preparation of this document, the Secretariat had received no further comments or proposals. Acting on the Sub-Committee's instructions, the Secretariat's two alternative proposals in paragraph 17 of Doc. NR0211E1 have therefore been reproduced in the Annex to this document. As to the provisions for the "base" and "fat content" in the Explanatory Note to heading 19.05, the Secretariat feels that this issue should not be considered until the water content issue with regard to waffles has been resolved.

III. CONCLUSION

18. The Sub-Committee is invited to examine the alternative proposals put forward by the Secretariat in the Annex to this document taking into account the comments above.

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