



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

-
26th Session
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NR0273E1
(+ Annex)

O. Eng.

Brussels, 31 July 2002.

POSSIBLE AMENDMENT OF HEADING 21.06 TO SPECIFICALLY
MENTION "FOOD SUPPLEMENTS"

(Item III.A.3 on Agenda)

Reference documents :

NR0187E1 (RSC/24)
NR0205E2, Annex D/5 (RSC/24 – Report)
NR0225E1 (RSC/25)

NR0257E1 (RSC/25)
NR0263E1 (RSC/25)
NR0265E3, Annex C/15 (RSC/25 – Report)

I. BACKGROUND

1. At its 24th Session (September 2001), the Review Sub-Committee examined a proposal from the Secretariat to include a reference to “food supplements” in heading 21.06.
2. After discussion, the Sub-Committee agreed that this question should be re-examined at its next session on the basis of a new document to be prepared by the Secretariat, with possible contributions from Contracting Parties, containing a proposal to define “food supplements”.
3. At the 25th Session of the Review Sub-Committee, explaining her administration’s proposal, the Delegate of the ~~Russian Federation~~ pointed out that there were two descriptions of food supplements in the HS Explanatory Notes, i.e., preparations based on extracts of plants and containing added vitamins described in the Explanatory Note to heading 21.06 and food supplements containing vitamins or mineral salts mentioned in the Explanatory Note to heading 30.04 as an exclusion. She stressed that vitamins and mineral salts should be considered food supplements to be consumed daily and not medicaments intended for the treatment of specific diseases or ailments. Therefore, it would be appropriate to classify all preparations containing vitamins and mineral salts in heading 21.06 regardless of the quantity of these substances in such preparations, unless they contained pharmaceutical substances.

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4. Several delegates expressed their thanks to the ~~Russian~~ Administration for its efforts to amend the HS Nomenclature and the Explanatory Notes in order to facilitate the classification of "food supplements". These delegates were of the opinion that this proposal was a good starting point for further discussion with regard to the definition and classification of "food supplements".
5. Other delegates favoured the status quo, entailing no legal amendments. In this regard several possible difficulties with regard to the Secretariat's proposal and the proposals submitted by administrations were pointed out. These difficulties included regulations covering "food supplements" from other authorities, e.g., national health authorities or agricultural authorities, which could be affected by a possible definition for "food supplements" in the HS Nomenclature. It was also emphasised that expressions such as "normal diet", "nutritive value", etc., in the proposals needed further clarification before a definition at legal level could be agreed upon. Finally, great concern was expressed as to the possible transfer of goods, not only within Section IV, but also from headings 30.03 and 30.04 to heading 21.06. Since headings 30.03 and 30.04 were covered by the WTO Agreement to eliminate Customs duties on pharmaceutical products, it was very important to study this possibility further.
6. The Director emphasised that this was a serious question. The number of administrations wanting to change the HS Nomenclature and the number of enquiries received by the Secretariat each year with regard to "food supplements" clearly indicated that something had to be done. He drew the Committee's attention to the fact that both the legal text (Note 1 (a) to Chapter 30) and the Explanatory Notes already had references to "food supplements," meaning that such products were not totally unknown to Customs administrations.
7. Winding up the discussion, the Chairman concluded that all proposals were left open for the next meeting of the Sub-Committee. He also invited administrations to look into this matter with their health authorities to see whether there were definitions of "food supplements" outside Customs and to make these definitions available to the Secretariat for possible inclusion in a new document.

II. SECRETARIAT COMMENTS

8. By the time of preparation of this document, the Secretariat had received no further comments or proposals from administrations with regard to this subject. The Secretariat has therefore sent a letter to several administrations and asked them to get in touch with their national food and/or drug authorities to find out whether there are definitions of "food supplements" in their national legislation and to report these findings to the Secretariat. The potential findings will eventually be published in a separate document at a later stage.
9. At the last Session of the Sub-Committee, great concern was expressed as to the possible transfer of goods, not only within Section IV, but also from headings 30.03 and 30.04 to heading 21.06. The Secretariat agrees that its initial proposal to insert a reference to "food supplements" in the text of heading 21.06 could entail a transfer of goods. However, in order to ensure the correct and uniform classification of such products, the Secretariat still feels that a legal provision should be inserted for such goods in heading 21.06. An alternative solution could therefore be to simply insert a specific subheading for "food supplements" in the structured nomenclature to heading 21.06 without amending the heading

text itself. In addition, a Subheading Note defining “food supplements” could be inserted in Chapter 21. In the Secretariat’s view, such an amendment would merely clarify the present situation with regard to the classification of “food supplements” within heading 21.06, thus entailing no transfer of goods. The Secretariat’s proposal, which is identical to its previous proposal, is reproduced in the Annex to this document.

III. CONCLUSION

10. The Sub-Committee is requested to decide, whether :
- (1) to retain the status quo, as expressed by several delegates at the previous sessions of the Sub-Committee, entailing no legal amendments; or
 - (2) to insert a new subheading in heading 21.06 for “food supplements”, as proposed by the Secretariat (and Azerbaijan and Mexico – see Doc. NR0225E1); and
 - (3) to insert a new Subheading Note in Chapter 21 defining “food supplements”.

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