



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
28th Session
-

NR0446E1
(+ Annex)

O. Eng.

Brussels, 29 July 2003.

ALIGNMENT OF THE TEXTS OF SUBHEADING 0210.11
(PROPOSAL BY THE NORWEGIAN ADMINISTRATION)

(Item III.B.1 on Agenda)

I. BACKGROUND

1. On 26 February 2003, the Secretariat received an enquiry from the Customs Administration of Norway concerning the classification of certain dried hams. According to the information submitted, the original bones in the hams had been taken out and replaced by two smaller bones weighing approximately 148 grams each and measuring 6 cm x 4.5 cm and 9.5 x 7 cm, respectively. It was not known whether these smaller bones were parts of the original hams. According to the Norwegian Administration, the intention of replacing the original bones with smaller bones could be to facilitate transportation and storage or to reduce the dutiable weight without changing the classification.
2. The issue under dispute was whether the product should be considered to be “hams “with bone in”” within the meaning of subheading 0210.11, or whether they should be classified as boneless hams of subheading 0210.19 (“other”). Furthermore, the Norwegian Administration wondered whether the English text of subheading 0210.11 (“with bone in”) and the corresponding French text (“non désossés” (literally meaning “not deboned”)) were aligned.
3. In its letter dated 7 April 2003, the Secretariat took the view that the two “parts” of the product at issue should be classified in subheading 0210.19 (ham) and subheading 0506.90 (bones) – on assumption that the bones were not edible – see Note 1 (a) to Chapter 5. The full text of the Secretariat’s reply is reproduced in the Annex to this document.
4. On 5 and 11 June 2003, respectively, the Secretariat received follow-up notes from the Norwegian Administration. The Norwegian Administration agreed with the Secretariat’s classification advice, but since the Norwegian Administration was still of the opinion that the texts at issue were possibly misaligned, it proposed that the question be submitted to the

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 2997

Review Sub-Committee for examination. The **Norwegian** Administration's latest note is reproduced below :

II. NOTE FROM THE **NORWEGIAN** ADMINISTRATION

5. "The **Norwegian** Directorate of Customs and Excise has, in connection with the question of classification of cuts of meat (including hams) with bone in, looked at the legal texts of the relevant subheadings within Chapter 2 of the HS Nomenclature. A list of the subheadings concerned is attached to this letter. Subheadings 0201.20 and 0210.11 are examples of the subheadings in question.
6. The question of how to understand the phrase "with bone in" arose when the Directorate was asked by a regional Customs administration on the understanding of the corresponding **Norwegian** text. The **Norwegian** text is a direct translation of the English text. When dealing with this question we found it desirable also to consult the French version of the HS Nomenclature.
7. This consultation revealed a possible misalignment between the two official languages of the HS Nomenclature, the French and the English. While the English text merely states an objective condition in which the cuts have to be presented, the French text "non désossés" gives a clear instruction on a certain process the products of these subheadings should have undergone.
8. In our understanding on what the subheadings are meant to cover, we will argue that the original bones of the meat cuts should still be in the product, and attached to the meat part. We feel that this understanding is perfectly in accordance with the French text. However, the English text, on the other hand, gives room for several interpretations on the intended coverage of the subheadings. As long as the English text only reads "with bone in", it does not clearly state neither that these bones should be the original bones nor that they should still be connected to the meat. **Norwegian** Customs Authorities have come across examples of smoked hams classified in subheading 0210.11 where the original bones have been removed, and where these bones have been replaced by minor bones of negligible weight/size. The importers claim that these hams are hams "with bone in", and that there is nothing in the subheading text requiring that these bones should be the original bones.
9. On this background, and to avoid similar problems in the future, we would like to propose the following action to be taken :
 - (i) Align the English text on the French, replacing "with bone in" with "not boned" or, alternatively, "with its bones not removed". We would appreciate this question on the possible misalignment between the two official languages to be forwarded to the next session of the Harmonized System Review Sub-Committee.
 - (ii) As the above mentioned action under no circumstances can be effective before 1 January 2007 we also propose that the following should be inserted under "General" in the Explanatory Note to Chapter 2 on page 16, alternatively as a Subheading Explanatory Note to headings 02.01 to 02.04 and to heading 02.10 :

“For the purpose of this Chapter, the expression “with bone in” means meat cuts (including hams) where all the cuts own bones are still present in the cut, and at no point of time have been removed from the cut.”

10. This addition might only be necessary in the English version, as it only states what is already obvious from the legal text in the French version.
11. List of subheadings concerned :
 - 0201.20
 - 0202.20
 - 0203.12
 - 0203.22
 - 0204.22
 - 0204.42
 - 0210.11.”

III. SECRETARIAT COMMENTS

12. According to the **Norwegian** Administration, the English text of the subheadings concerned (“with bone in”) might be interpreted to cover a product where the original bones have been taken out and replaced by smaller bones. On the other hand, the French text “non désossés” (literally meaning “not deboned”) would, in the view of the **Norwegian** Administration, not cover this product. The **Norwegian** Administration therefore proposes to align the English text on the French text by replacing “with bone in” with “not boned” or, alternatively, “with its bones not removed”.
13. In its classification advice to the **Norwegian** Administration concerning the hams at issue (see Annex), the Secretariat concluded that the replacement of the original bones in hams with much smaller bones was a process which, in the view of the Secretariat, had deprived the hams in question of their character of being hams “with bone in” within the meaning of the HS Nomenclature. Furthermore, the Secretariat was of the opinion that the combinations of hams and bones under consideration did not represent “combinations” of materials within the meaning of General Interpretative Rule 2 (b). Accordingly, the Secretariat was of the opinion (and still is) that the hams at issue and the bones at issue should be classified in their own appropriate headings. The Secretariat therefore wonders whether it is necessary to amend the English text as proposed by the **Norwegian** Administration. The Secretariat agrees that the two texts at issue are not completely aligned, but replacing “with bone in” with “not boned” or “with its bones not removed” could complicate the classification of, e.g., hams where parts of the bones have been removed.
14. Furthermore, from a point of principle, the Secretariat questions whether the HS Nomenclature should be amended to cover products which have been subjected to processes normally known as “tariff engineering” – e.g., in order to change classification and to reduce duty rates. Nonetheless, the decision as to whether legal amendments are required is of course up to the Sub-Committee to decide,
15. Since the HS Nomenclature can not be changed before 1 January 2007, the **Norwegian** Administration has also proposed to amend the Explanatory Notes during the

NR0446E1

interim. The Secretariat would prefer to leave this proposal aside for the time being, until a decision concerning possible amendments to the legal texts has been taken.

IV. CONCLUSION

16. The Committee is invited to examine whether the English expression “with bone in” should be aligned on the corresponding French expression “non désossés”, as proposed by the **Norwegian** Administration.

* * *

SECRETARIAT REPLY TO THE NORWEGIAN ADMINISTRATION

“This is with reference to your letter of 26 February 2003 (ref. 2003/0611) concerning the classification of dried hams.

Description

According to the information and illustrations provided by your administration, the dried hams at issue have a net weight of approximately 6 kgs and measure around 45 cm x 30 cm x 10 cm. During the preparation process, the original bones in the hams have been taken out and replaced by two smaller bones weighing approximately 148 grams each and measuring 6 cm x 4.5 cm and 9.5 x 7 cm, respectively. It is not known whether these smaller bones are parts of the original hams. According to your administration, the intention of replacing the original bone with smaller bones could be to facilitate transportation and storage or to reduce the dutiable weight without changing classification.

Classification

Your administration wonders whether the hams at issue can be regarded as hams “with bone in” within the meaning of subheading 0210.11, or whether they should be classified as boneless hams of subheading 0210.19 (“other”). Furthermore, your administration wonders whether the English text (“with bone in”) and the corresponding French text (“non désossés” (literally meaning “not deboned”)) are aligned.

The Secretariat agrees that both subheadings 0210.11 and 0210.19 merit consideration.

According to information from the Internet, it seems that the original bone in a ham (Parma) represents between 23.5 % and 27.3 % of the total weight. In the hams at issue these bones represent about 5 % of the total weight. Replacing the original bone in hams with much smaller bones is a process which, in the view of the Secretariat, has deprived the hams in question of their character of being hams “with bone in” within the meaning of the HS Nomenclature. Furthermore, the Secretariat is of the opinion that the combinations of hams and bones under consideration do not represent “combinations” of materials within the meaning of General Interpretative Rule 2 (b). Accordingly, the Secretariat is of the opinion that the hams at issue and the bones at issue should be classified in their own appropriate headings.

For that reason, the Secretariat is of the view that the two “parts” of the product at issue should be classified in subheading 0210.19 (ham) and subheading 0506.90 (bones) – on assumption that the bones are not edible – see Note 1 (a) to Chapter 5.

If you do not agree with the opinion expressed above, the Secretariat is ready to submit this question to the HS Committee for consideration at its 32nd Session (November 2003). Please let us know as soon as possible if you wish to do so.”
