



HARMONIZED SYSTEM  
COMMITTEE

-  
32<sup>nd</sup> Session

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(+ Annex)

O. Eng.

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CLASSIFICATION OF MIXTURES OF FATS AND OILS OF HEADINGS 15.16 AND 15.17

(Item VIII.3 on Agenda)

I. BACKGROUND

1. On 7 October 2003, the Secretariat received a note from the **European Community** requesting it to submit the HS classification of certain mixtures of fats and oils of headings 15.16 and 15.17 to the Harmonized System Committee for consideration.
2. The **EC** comments are set out below. The Secretariat has numbered the paragraphs of the note for ease of reference.

II. NOTE FROM THE **EC**

“BACKGROUND

3. Heading 15.17 in the Nomenclature appended to the HS Convention covers “(...) edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading 15.16”.
4. The text of heading 15.18 also includes an exception for the fats and oils of heading 15.16.
5. Heading 15.16 covers “animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared”.
6. According to these legal texts, heading 15.16 takes priority over the other headings of Chapter 15, and in particular over headings 15.17 and 15.18.

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7. This means that heading 15.16 covers only animal or vegetable fats and oils and their fractions which have undergone one of the specific chemical transformations listed in the heading text. In this connection, the first paragraph of the Explanatory Note to this heading, on page 131, also appears to place restrictions on the chemical transformations which the products of this heading may undergo.
8. It is important to note that headings 15.16 and 15.17 cover a wide variety of fats and oils which have undergone various processes and transformations.
9. These are, for the most part, a completely new generation of technological products (special fats, CBE (equivalent to cocoa butter), hydrogenated, inter-esterified or re-esterified fats and oils). The demand for, and consumption of, these products has increased steadily over the past 10 to 15 years.
10. The opinions expressed by the Customs authorities of certain HS Contracting Parties with regard to the HS classification of these products are not consistent. Similarly, the Customs duties applicable to the importation of the products of HS headings 15.16 and 15.17 are sometimes very different, and exports or imports depend on the rate applicable. Moreover, it sometimes happens that a country unilaterally changes the interpretation of these headings, without giving a precise reason for doing so. This situation breeds legal uncertainty and gives rise to differing interpretations by administrations and economic operators.

#### PROBLEM POSED

11. The essential question is whether or not the mere fact of mixing two different vegetable oils is to be regarded as "further preparation" within the meaning of HS heading 15.16 :
  - The Customs authorities of certain HS Contracting Parties consider that a product which has simply been mixed should be regarded as "further prepared" (transformed), and should therefore be classified in HS heading 15.17.
  - Other Contracting Parties take the view that in order to be regarded as "further prepared", a product must have undergone a major transformation. Only in that eventuality would the product be classified not in heading 15.16, but in heading 15.17.
  - As far as some operators are concerned, the simple fact of mixing together two different vegetable oils does not constitute a major transformation. Consequently, a change of tariff heading is not warranted. The Explanatory Notes to headings 15.16 and 15.17, and to some of their subheadings, give support to that view. Inter-esterified and re-esterified products clearly fall in heading 15.16 : the normal inter-esterification process involves inter-esterifying a mixture of two different vegetable oils. According to these operators, the factor to be taken into account is the inter-esterification. The fact that this process involves a mixture of products is not important. Consequently, an inter-esterified mixture clearly falls in HS heading 15.16, just as the same mixture would if it were hydrogenated.

## SAMPLE PRODUCTS

12. As an example, and to clarify the nature of the problem posed, the EC wishes to put forward three vegetable fats known commercially as “Erticoat P 11”, “Prestine 12F” and “AkomeI S”.
13. Delegations will find appended to this Note, two composition and chemical analysis specifications for Erticoat P 11 and Prestine 12F.
14. “AkomeI S” is also a mixture of soya oil (41.5 %), palm olein (49 %), colza oil (7.5 %) and palm oil (2 %).
15. The EC understands that the Erticoat and Prestine 12F products have been classified in heading 15.17 by a non-Community administration, through a binding tariff ruling. At the operator’s request, the administrative Supreme Court of that country appears to have revoked the BTR.

## CONCLUSION

16. It could be maintained that the fats and oils referred to in the text of heading 15.16, merely mixed together, fall to be classified in that heading by application of General Interpretative Rules 1 (exclusion for these products in the texts of headings 15.17 and 15.18) and 2 (b) to the HS Nomenclature, and that such mixtures cannot be regarded as being “further prepared”.
17. In that context, the last paragraph of the Explanatory Note to heading 15.16, on page 132, provides some information about the meaning of this expression.
18. On the other hand, it could be argued that the text of heading 15.16 is confined exclusively to animal or vegetable fats or oils, and fractions thereof, which have undergone one of the specific chemical transformations referred to in the heading text, and that “mixtures” fall in heading 15.17 where they are mentioned explicitly.
19. The EC wishes to make it clear that this is not the subject of a dispute between the EC and another HS Contracting Party. The matter has been raised with a view to achieving the uniform interpretation, world-wide, of the scope of headings 15.16 and 15.17.
20. In conclusion, the European Community invites the HS Committee to clarify the situation by giving an interpretation of the precise scope of headings 15.16 and 15.17 of the Nomenclature appended to the HS Convention.”

## III. SECRETARIAT COMMENTS

21. Given the recent arrival of the EC Note, the Secretariat has not been able to carry out a study on the classification of products at issue. The Secretariat has therefore refrained from commenting.
22. The information with respect to the composition and the chemical analysis, referred to in paragraph 13 above, is reproduced in the Annex to this document in the original format in English only.

A mixture of soya oil (41.5 %), palm olein (49 %), colza oil (7.5 %) and palm oil (2 %).

IV. CONCLUSION

23. The Committee is invited to examine the classification of mixtures of fats and oils, taking into account the comments by the **EC** above.
24. The Committee is also invited to instruct the Secretariat as to what further action should be taken in this regard.

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ANNEX

COMPOSITION AND CHEMICAL ANALYSIS SPECIFICATIONS FOR

ERTICOAT P 11 AND PRESTINE 12F

ERTICOAT P 11

**COCOA BUTTER SUBSTITUTE**

ERTICOAT P 11 is a non-lauric CBS on the basis of vegetable oils and fats, obtained by hydrogenation and fractionation.

1. Chemical and Physical Properties

Iodine value (gI <sub>2</sub> /100g)	: 62 - 72
FFA (%)	: max. 0.2
Peroxide value (meq/kg)	: max. 1
Solid fat content (%)	
20 °C	: 78 - 87
25 °C	: 62 - 71
30 °C	: 32 - 41
35 °C	: max. 3
Fatty acid composition (%) (typical)	
C16:0	: 18
C18:0	: 6
C18:1	: 72
C18:2	: 3

2. Application

ERTICOAT P 11 can be recommended for moulded products and for coatings where long shelf life and steep melting are very important. No tempering is required. It has the advantage over a lauric CBS that your formula may contain up to 15 % of cocoa butter on fat basis.

3. Heavy Metals

As	:<math>< 0.1</math>	ppm
Cd	:<math>< 0.02</math>	ppm
Cu	:<math>< 0.1</math>	ppm
Fe	:<math>< 1.0</math>	ppm
Hg	:<math>< 0.01</math>	ppm
Ni	:<math>< 0.2</math>	ppm
Pb	:<math>< 0.1</math>	ppm
Zn	:<math>< 5.0</math>	ppm

4. Microbiology

Total plate count	:<math>< 1000</math>	/g
Enterobacteriaceae	:<math>< 10</math>	/g
E. coli	: neg	/g
Salmonella	: neg	/25g
Yeasts	:<math>< 50</math>	/g
Moulds	:<math>< 50</math>	/g

5. Pesticides

Organo-chlorides	: neg
Polychlorinated biphenyls (PCB's)	: neg

6. Composition

Raw materials	non-lauric vegetable oils and fats	
Oil content	:> 99.7	%
Moisture and volatiles	:<math>< 0.3</math>	%
Insoluble impurities	:<math>< 0.3</math>	%
C 22:1 fatty acids	:<math>< 1</math>	%
Additives		
STS	: max.	2 %
citric acid	: max.	50 ppm

## PRESTINE 12 F

### Product Description:

PRESTINE 12 F is a fractionated, hydrogenated, refined vegetable fat.

### Technical Characteristics (typical data):

Free fatty acid as oleic acid	:	0.02	%
Peroxide value	:	0.2	meqO <sub>2</sub> /kg
Lovibond colour (cell size 1")	yellow	:	3.2
	red	:	0.6
Percentage of solid fat at	20°C	:	49 %
	25°C	:	24 %
	30°C	:	7 %
	35°C	:	1 %
Slip melting point	:	33	°C

The percentage of solid fat at a given temperature is measured by pulse NMR on samples stabilised according to IUPAC method 2.150(a).

### Packaging and storage:

PRESTINE 12 F is available in 25 kg cartons, 200 kg steel drums and in bulk. Cartons and drums should be stored in a dry place and direct exposure to sunlight should be avoided. Bulk oil should be stored at a temperature of 45-50°C.