



HARMONIZED SYSTEM
COMMITTEE

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CLASSIFICATION OF "CHICKEN SAUCE" : RESERVATION BY NORWAY

(Item VII.4 on Agenda)

Reference documents :

41.320 (HSC/20 and HSC/21)
42.092 (HSC/21)
42.100, Annex IJ/2 (HSC/21 – Report)
42.441 (HSC/22)
40.295 (HSC/17)
42.750, Annex G/15 (HSC/22 - Report)

I. BACKGROUND

1. At its 22nd Session (November 1998), the Harmonized System Committee examined the classification of "CHICKEN TONIGHT" – "Oriental Sweet and Sour Sauce" ("chicken sauce"). After discussion, the Committee decided, by 18 votes to 9, to classify the product in heading 21.03 (subheading 2103.90), by application of General Interpretative Rule 1.
2. By its letter of 15 January 1999, the Norwegian Administration asked the Secretary General of the WCO to refer the Committee's decision to the Council, in accordance with the provision of Article 8.2 of the HS Convention.
3. The Council, at its 93rd/94th Sessions in June 1999, considered the Norwegian reservation and it decided to refer the question of the classification of "chicken sauce" back to the Committee for re-examination.
4. On 5 July 1999, the Secretariat received the following Note from the Norwegian Administration putting forward arguments in support of the reservation it had entered in respect of the decision of the Harmonized System Committee (22nd Session) concerning the classification at issue.

File No. 2687

II. NOTE FROM THE NORWEGIAN ADMINISTRATION

5. "The Directorate of Customs and Excise, with reference to our letter dated 15 January 1999, hereby submits information and the reasoning why Norway requested that the decision on classification of a course consisting of mixed vegetables in a sauce, done at the 22nd Session of the Harmonized System Committee (HSC), be referred to the Council. In accordance with Article 8.3 of the Convention, the Council is also requested to refer the case back to the Harmonized System Committee for re-examination.

6. The course is named both "Oriental Sweet and Sour Sauce" and "Chicken Tonight" on its label. Hereinafter the product is referred to as "Chicken Tonight". The question is whether "Chicken Tonight" shall be considered a sauce (heading 21.03 as judged by the HS Committee) or a vegetable course (heading 20.01 or heading 20.05 as judged by the Norwegian Customs Administration).

Classification of "Chicken Tonight". General remarks.

7. A description of the product in question may be found, inter alia, in WCO Doc. 42.441, page 4 :

8. "Oriental Sweet and Sour Sauce" in the form of a reddish suspension containing visible pieces (about 1 to 2 cm in length and about 0.5 to 1 cm in width) of vegetables (about 26 % : red peppers, onion, carrots and green peppers) and fruit (about 7 % : pineapple) in addition to water, sugar, tomato puree, modified starch, white wine, salt, herbs and spices (including garlic and ginger), stabiliser (xanthan gum) and soy sauce. The sauce is put up in glass containers (e.g., 525 g) labelled with information about the composition and use. It is recommended to be added to strips of cooked chicken and heated together with the chicken."

9. Classification of goods "shall be determined according to the terms of the headings and any relative Section or Chapter Notes" (GIR 1).

10. No decision of classification of goods should be based on the end-use or the packaging of the product, unless the legal texts otherwise require. Nor shall any decision be based on the producer's or importer's description or presentation of a product if this description does not comply with the descriptions or explanations in the Nomenclature or the Explanatory Notes (ENs). For example, a producer of a dry preparation for the manufacture of a beverage may on the container state that the product is a lemon drink, but it is most probably classified within heading 21.06, and not in Chapter 22, as long as it is not ready to drink.

11. The ENs are prepared by the Harmonized System Committee and express the member administrations of the HS Convention interpretation of the Harmonized System Nomenclature. The ENs are not part of the legal text of the Nomenclature, but they serve as guides to the interpretation of the Harmonized System. We refer at this point also to Article 7.1(b) of the Convention. It would go against the Convention to disregard the ENs. If this was the case, the ENs would have no purpose.

12. Norway wishes to stress the fact that the ENs must be taken into consideration as a valid source in any matter concerning the interpretation of the Harmonized System.

13. In the context of the ENs, the product description given by the Secretariat for the “Chicken Tonight” is not accurate since the product is positively described as a sauce put up in glass containers.

Classification options

14. The headings considered when the question on classification of the “Chicken Tonight” was dealt with in the HS Committee were heading 20.01 and heading 21.03. The above description of the product does not indicate that the product contains neither vinegar nor acetic acid. The product can therefore not be considered to be prepared or preserved by vinegar or acetic acid. Norway has therefore considered heading 20.05 instead of heading 20.01. We have noticed that vinegar is mentioned as one of the ingredients in the product description in document 41.320, but has decided to base our work on the most recently given information.
15. However, as the main question is whether “Chicken Tonight” is a sauce under the terms of heading 21.03 or a vegetable product of Chapter 20, we find that the question whether heading 20.01 or heading 20.05 is the correct alternative is of secondary importance.

Heading 20.05

16. This heading reads “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 20.06”.
17. The relevant Note is Note 3 to Chapter 20 : “Headings 20.01, 20.04 and 20.05 cover, as the case may be, only those products of Chapter 7 or of heading 11.05 or 11.06 (other than flour, meal and powder of the products of Chapter 8) which have been prepared or preserved by processes other than those referred to in Note 1 (a)”.
18. The EN to heading 20.05 states that products of the heading may be whole, in pieces, crushed, preserved in water, in tomato sauce, or with other ingredients ready for immediate consumption. They may also be homogenised or mixed together.
19. The product coverage mentioned in the EN is not an exhaustive list of the heading coverage, but examples only. Further, it should be noted that the term “for immediate consumption” is no legal requirement for goods falling under this heading. A large number of vegetables are classified under heading 20.05 irrespective of whether they are ready for immediate consumption or not. However, one should note that the EN states that the products might be in pieces, as well as mixed and in a sauce.
20. Taking all this information into consideration, there is nothing, neither in the legal text nor in the EN that should prevent “Chicken Tonight” from being classified in heading 20.05.

Heading 21.03

21. This heading reads “Sauces and preparations therefor; mixed condiments and mixed seasonings; Mustard flour and meal and prepared mustard”.

22. The EN to heading 21.03 states, regarding sauces and preparations therefor, and mixed condiments and mixed seasonings :

“This heading covers preparations, generally of a highly spiced character, used to flavour certain dishes (meat, fish, salads, etc.), and made from various ingredients (eggs, vegetables, meat, fruit, flours, starches, oil, vinegar, sugar, spices, mustard, flavourings, etc.). Sauces are generally in liquid form and preparations

The heading includes certain products based on vegetables or fruit, but these differ from the preserved products in Chapter 20 (and more especially those under heading 20.01) in that they are mainly liquids, emulsions or suspensions containing very little solid matter, - see the Explanatory Note to heading 20.01 regarding these preparations. ... Examples of products covered by the heading are: mayonnaise, salad dressings, Béarnaise, bolognaise (consisting of chopped meat, tomato purée, spices, etc.), soya sauces, mushroom sauce, ... ”.

23. Extract from the EN to heading 20.01 : “The goods covered by this heading differ from sauces of heading 21.03 in that the latter are generally liquids, emulsions or suspensions containing practically no pieces of fruit, vegetables or edible parts of plants”.

24. The main questions are, as previously stated, whether “Chicken Tonight” may be described as a sauce (eventually mixed condiments) or mixed vegetables in a sauce, and whether there are requirements in the EN to 21.03 which in any case should lead to a classification of the product in question in Chapter 20.

25. Visually, “Chicken Tonight” and many similar products may be compared to soups, which also in most cases consist of pieces of meat, vegetables, etc., and a liquid part. A product, which is visually comparable to soups, can hardly be regarded or described as a sauce, but must be classified according to the various pieces in the product. The visible pieces must be regarded as the components of the mixture or the composite good which gives the product its essential character (GIR 3(b)). In the case of “Chicken Tonight”, these ingredients are a mixture of various vegetables and pineapple.

26. We are aware that in some parts of the world this kind of product is used in the same manner as a sauce, and may wholly replace the use of a sauce. However, it is important to bear in mind that classification decisions must be based on the Harmonized System itself and its ENs.

27. The EN to heading 21.03 states that sauces of that heading are mainly liquids, emulsions or suspensions containing very little solid matter. Neither the legal text nor the EN states a fixed upper limit for the content of solid matter or any definition of the expression “very little solid matter”. A classification in this area thus falls back on an interpretation that has its base in the common understanding of the language, reading both the legal text, the EN and the facts about the product itself.

28. “Chicken Tonight” contains about 33 % of visible pieces of about 1 to 2 cm in length and about 0.5 to 1 cm in width. A content of 33 % solid matter can under no circumstance be regarded as “very little”. As the product contain more than “very little solid matter” and even visually hardly can be described as a sauce, as stated above, the product cannot be regarded as a sauce falling within heading 21.03.

29. During the 22nd Session of the HS Committee some delegates referred to bolognaise sauce as an argument for also classifying "Chicken Tonight" under heading 21.03 because bolognaise sauce contains a large amount of visible pieces of chopped meat.
30. We want to draw your attention to the fact that chopped meat is the basic ingredient in a bolognaise sauce and the chopped meat pieces are not added after the finishing of the sauce. The latter we believe is the case for "Chicken Tonight". In addition, the size of the pieces of chopped meat is so small that the product appears close to a homogenised preparation. In "Chicken Tonight" we find pieces of vegetables and pineapple of significantly larger sizes.
31. Norway therefore believes that the correct classification of "Chicken Tonight" is within heading 20.05, or eventually heading 20.01 if it is regarded as prepared or preserved by vinegar or acetic acid. The Secretariat and the Committee are hereby invited to take our view into consideration when dealing with the matter.

Amendment to the Explanatory Notes

32. Regardless of the result of the re-examination of the classification of "Chicken Tonight", Norway feels that it is necessary to *amend* the EN to heading 21.03 by corrigendum to avoid unnecessary classification disputes resulting from different opinions of the meaning of "very little solid matter" for the future. Depending on the result of the re-examination of "Chicken Tonight" we would like to propose the following alternatives :
- a) If "Chicken Tonight" is classified under Chapter 20 :
- Delete "containing very little solid matter" and replace by a full stop and insert : "The expression "sauces" does not cover a preparation of vegetables, fruit or other edible parts of plants if the percentage of these ingredients passing through a metal wire sieve, with an aperture of 5 mm, is, after rinsing with water of a temperature of 20 °C, less than 80 % by weight, calculated on the original preparation."
- b) If "Chicken Tonight" is classified under heading 21.03 :
- Replace the limit for ingredients passing though the sieve under proposal a) with 60 % by weight.
33. These proposals are based on an additional Note to Chapter 21 in the Combined Nomenclature of the European Communities."

III. SECRETARIAT COMMENTS

34. When this question was discussed by the Committee (22nd Session), several delegates expressed the view that the "chicken sauce" at issue should be classified in heading 21.03, since it was used as an accompaniment to chicken dishes and was covered by the generally understood meaning of the term "sauce" described in the technical literature, e.g., the "Larousse Gastronomique Dictionary". They pointed out that it was not eaten separately or used as prepared vegetables, but was intended to enhance the flavour of the accompanying food. With regard to the provisions in the Explanatory Note to heading 21.03 that sauces, in general, contained very little solid matter, they noted that it should not be taken to mean that all sauces containing solid matter were excluded from heading 21.03 and that it should be

interpreted in the context of the heading text, which referred to sauces. In support of this view, it was pointed out that "bolognaise" sauce containing substantial quantity of visible pieces of chopped meat (39 %) was classified in heading 21.03 as indicated in paragraph 8 of Doc. 41.320.

35. Other delegates, however, were of the view that the product could not be classified as a sauce since it contained a substantial amount of large pieces of vegetables. In their view, the scope of sauce classified in heading 21.03 should be restricted to products containing very little solid matter, as indicated in the Explanatory Note to heading 21.03. It was also pointed out that the product at issue was in fact used in the preparation of certain food dishes and that fruit and vegetable pieces from the product were visible in the final dish and were the essential ingredients of the preparation. Most of these delegates would therefore classify the product in heading 20.05 as "other prepared or preserved vegetables". One delegate, however, preferred to classify the product in heading 20.01 as a vegetable product, prepared or preserved in vinegar.
36. The Secretariat agrees that, on the basis of a strict reading of the Explanatory Note to heading 21.03, it is difficult to classify the "chicken sauce" in question in that heading. However, since "bolognaise" sauce, which usually contains a substantial quantity of visible pieces of meat and vegetables (as much as 39 % meat and 10 % vegetables, was classified in heading 21.03, the Secretariat still wonders whether there is any reason to exclude "CHICKEN TONIGHT - Oriental Sweet and Sour Sauce" from heading 21.03, particularly since it is traded and used as a sauce.

IV. CONCLUSION

37. The Committee is invited to re-examine the appropriate classification of "CHICKEN TONIGHT" - "Oriental Sweet and Sour Sauce ("chicken sauce") described above, taking into account the comments of the Norwegian Administration in paragraphs 5 to 33 above and the comments of the Secretariat in paragraphs 34 to 36. In this context, the Committee is reminded that the Secretariat was requested to prepare a Classification Opinion for the product in question (see Doc. 42.750, Annex G/15 (HSC/22 – Report)).
38. As to further action, the Committee also agreed that it would be desirable to establish more precise criteria for the distinction between sauces of heading 21.03 and similar products of Chapter 20. However, opinions were divided as to how this should be done. Some delegates agreed that Explanatory Note amendments along the lines proposed by the Secretariat and set out in paragraph 7 of Doc. 42.441 would suffice. Other delegates, however, preferred legal amendments based on objective criteria, such as a percentage of solid matter content, since the composition and appearance of sauces might differ from country to country. One delegate suggested that a new legal Note prescribing the criteria be drafted. The Committee finally agreed to consider both options. The Secretariat was instructed to prepare a new document taking into account the suggestions by delegates for examination. The Committee is invited to confirm these instructions.