



HARMONIZED SYSTEM
COMMITTEE

-
24th Session

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O. Eng.

H9-3

Brussels, 7 September 1999.

CLASSIFICATION OF "HIGH FAT CREAM CHEESE" AND POSSIBLE
CREATION OF A DEFINITION OF CHEESE IN HEADING 04.06

(Item VII.10 on Agenda)

Reference documents :

41.475 (HSC/20)	42.750, Annex G/12 (HSC/22 – Report)
41.600, Annex G/23 (HSC/20 – Report)	42.805 (SSC/14)
42.040 (HSC/21)	42.827 (SSC/14)
42.056 (HSC/21)	42.828 (SSC/14)
42.113 (HSC/21)	42.850, Annex A/13 (SSC/14 - Report)
42.100, Annex H/1 (HSC/21 – Report)	NC0027E1 (HSC/23)
42.438 (HSC/22)	NC0086E1 (HSC/23)
42.727 (HSC/22)	NC0090E2, Annex E/1 (HSC – Report)

I. BACKGROUND

1. At its 14th Session, the Scientific Sub-Committee had a preliminary discussion on the classification of “High Fat Cream Cheese” (Doc. 42.850, Annex A/13).
2. Several delegates indicated that samples had to be presented, not only for testing purposes, but also to get an impression of the products’ texture, feel, smell, look, etc. It was thought that such characteristics might be extremely relevant when deciding whether a product should be considered to be a cheese within the HS Nomenclature.
3. It was therefore decided that Australia should supply interested delegations with samples in order to carry out necessary testing, and to give an impression of the products’ texture, feel, smell, look, etc. It was also decided that the results of these tests should be sent to the Secretariat in due time before the next meeting of the Harmonized System Committee in May 1999, in order to prepare a new working document for that session. Interested administrations were invited to notify the Secretariat of their intention to participate in the test.

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4. As these samples were sent quite late (April 1999) from Australia to the “interested delegations”, only one (out of ten) had carried out the laboratory tests before the 23rd Session of the HSC. The Committee, therefore, decided to postpone discussion of this item to the 24th Session, when the results of laboratory tests would be available.
5. At the time of preparation of this document, the Secretariat has not yet received test results from the other administrations. When they become available they will be submitted to the Committee.
6. According to the Report from the 23rd Session of the Codex Alimentarius Commission (28 June – 3 July 1999) a Draft Revised Standard for cheese was adopted. The Secretariat has therefore contacted the International Dairy Federation to obtain a copy of this new standard. This will hopefully also be submitted to the Committee in due course.
7. On 11 June 1999, the Secretariat received further comments from the Australian Customs Administration.

II. COMMENTS FROM THE AUSTRALIAN CUSTOMS ADMINISTRATION

8. “As you are aware, discussion on this agenda item was postponed, as replies had not been received from the “interested parties” assessing samples of the cheese.
9. The item will therefore be debated at HSC/24. The Australian Administration felt that the Secretariat document prepared for HSC/23 set out the issue carefully and clearly. However, on the assumption that this document will form the basis of a HSC/24 document, we would wish to see a number of minor changes that we believe will enhance the document.
10. Paragraph 3 indicates a “generic” manufacturing method – this is not how all are made – it may be how one or some of the products are made but certainly not all. One product (at least) starts with cheese milk at 10 % fat and this milk is exactly the same milk as used for other varieties of cream cheese. This Administration would like paragraph 3 modified to indicate that the cheeses under consideration are manufactured by a number of methods including the one mentioned above.
11. Paragraph 6 is a statement of concerns raised by Japan and, in the interests of a fair presentation of the issue, this Administration feels it should be followed by a new paragraph 7 along the following lines – *“The Australian Administration has responded to these concerns with the following observations :*
12. *Re (a) – the manufacturing processes do, in fact, satisfy the provisions of the CODEX standards A6-2 sub para (a) in some cases, A6-2 sub para (b) in others. The International Dairy Federation has confirmed this – see document 42.040.*
13. *Re (b) & (c) – Neither of these is relevant in classifying cheese – neither the headings nor the legal notes make such a distinction. Neither does CODEX which remains the only internationally recognised definition of cheese. Additionally with regard to (b) the statement assumes that this is “protein” which coagulates – in fact it is the mass of cheese which coagulates to form the “cheese” entity.*

14. *Re (d) – these products cannot be classified as dairy spreads – they do not meet the legal definition of dairy spreads in the HS. This is a critical point. Chapter 4 Note 2 (b) says “dairy spreads” are of the “water in oil” type. The goods under examination are not of the “water in oil” type. They are an emulsion which is neither completely water in oil nor completely oil in water. The phase of water in oil varies throughout the product – this is consistent with most traditional cheese varieties. The product cannot be classified as “dairy spreads”.*
15. The Australian Administration does agree that a clear distinction between dairy spreads and cheese products is desirable and in this regard we have concerns that these goods may be classified on the basis of particular percentages of content, i.e., “more than 1 % protein” when there are a variety of methods of analysis and each method has a “testing error” – both the preferred analytic method and the acceptable error range (i.e., “+ or -“ 1,2,3 % etc) must be known.
16. In relation to description of the goods (after paragraph 33) this Administration believes that, again, a generic definition is provided, when, in reality there are a number of different goods, produced by a variety of manufacturing methods, being considered by the Committee. We suggest the following :
- “Milk product, butterfat content not exceeding 73 % and a protein content exceeding 1.0 %. The product is semi solid at room temperature and is manufactured by a variety of methods.”*
17. You will note that this revised description is in line with the analyses done on the samples but it also restricts the description to those factors that appear to be at issue in this debate, namely butterfat and protein content.
18. As indicated above this Administration believes that the document to be produced for the 24th Session will be improved by these amendments.”

III. SECRETARIAT COMMENTS

19. The Australian Administration is of the view that the description given in Doc. NC0027E1, paragraph 3, is a “generic” manufacturing method. In this respect it has to be pointed out that the background for this agenda item is a classification request from the Japanese Customs Administration (July 1997). In this request three particular products were described with the analytical results obtained in Japan. The Secretariat is therefore of the opinion that the description in Doc. NC0027E1, paragraph 3, is not a “generic” manufacturing method, but relates to this specific classification issue. It should also be noted that Australia has accepted the analysis done by Japan (Doc. 42.827).
20. According to the Australian Administration, paragraph 6 (Doc. NC0027E1) is a statement of concerns raised by Japan and, in the interests of a fair presentation of the issue Australia feels it should be followed by a new paragraph. In the opinion of the Secretariat, the above-cited paragraph reflects what was stated by the Japanese Administration at the 22nd Session of the Committee and accordingly corresponds to the Report from that Session (Doc. 42.750, Annex G/12).

IV. CONCLUSIONS

21. The Committee is invited to
- (a) rule on the classification “High Fat Cream Cheese”, as described in paragraphs 3 and 4 of Doc. NC0027E1, taking into account the comments of Scientific Sub-Committee in paragraphs 13 to 25 of Doc. NC0027E1, the comments from the Australian Administration in paragraphs 8 to 18 above and the Secretariat’s observations in paragraphs 19 and 20 above;
 - (b) decide what further action should be taken to reflect the Committee’s decision; and
 - (c) express its view as to what further action should be taken with regard to the definition of cheese.
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