



HARMONIZED SYSTEM
COMMITTEE

-
25th Session
-

NC0223E1

O. Eng.

Brussels, 17 March 2000.

CLASSIFICATION OF A TOBACCO MIXTURE KNOWN AS "BASIC BLENDED STRIP"

(Item I on Additional List)

I. BACKGROUND

1. On 2 March 2000, the Secretariat received a Note from the US Customs Administration requesting that the classification of a product known as "Basic Blended Strip (BBS)" be submitted to the 25th Session of the Harmonized System Committee. A sample will be made available during the meeting.

II. NOTE FROM THE US ADMINISTRATION

"Description of the Merchandise"

2. A tobacco mixture, known as Basic Blended Strip (BBS), consists of a mixture of (1) uncut stemmed leaves (i.e., "strip," which is an industry reference to leaves from which the mid-rib stem has been removed) of cured Virginia, Burley and, in some instances Oriental tobacco, and (2) reconstituted tobacco. The strip tobacco leaves and the reconstituted tobacco are mixed together by controlled layering in a silo.
3. According to the manufacturer, BBS is produced by (1) stemming natural leaves, (2) separating stemmed leaves on a vibrating conveyor, (3) mixing Virginia/Oriental leaves with reconstituted tobacco, (4) moistening (5) in the case of Burley-type tobacco leaves, casing pre-blended tobacco, (6) collecting and mixing in silos of the stemmed Burley tobacco leaves with the stemmed Virginia tobacco leaves/reconstituted tobacco, and (7) packing for shipping.
4. In its condition as imported, BBS is not ready for smoking. BBS must be cased, cut and blended with other ingredients to form the tobacco mixture or "cut filler" used in cigarettes.

File No. 2802

5. Laboratory analysis of BBS samples by the U.S. Customs Administration indicates that strip tobacco represents 75% of the total mixture by weight, and reconstituted tobacco represents 25% of the total mixture by weight.

Nomenclature

6. Heading 24.01 and heading 24.03 merit consideration. BBS is a mixture of strip and reconstituted tobacco.
7. Heading 24.01 provides for unmanufactured tobaccos and tobacco refuse. Explanatory Note 24.01, at page 189, states that the heading includes unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking). Strip tobacco comprises uncut, stemmed tobacco leaves, whose mid-rib stem has been removed. According to the Explanatory Notes, "stemmed/stripped" tobaccos are unmanufactured tobaccos of heading 24.01. This heading clearly covers the strip tobacco component of the BBS.
8. Heading 24.03 provides for other manufactured tobacco and manufactured tobacco substitutes, "homogenized" or reconstituted" tobacco, and tobacco extracts and essences. According to Explanatory Note 24.03, at page 191, a tobacco product created by reconstituting "tobacco leaves, refuse and dust" into tobacco sheet falls in heading 24.03. This heading clearly covers the reconstituted tobacco component of BBS.

Analysis

9. As a mixture of two products, one of which is classified in heading 24.01 and the other in heading 24.03, BBS would not be classified by reference to GIR 1, because this rule addresses the classification of articles covered only by a single heading. Therefore, noting GIRs 2 (b) and 3 (a), classification of the mixture would be pursuant to GIR 3 (b), the next applicable heading applied in hierarchical order, provided the legal notes or heading texts do not indicate otherwise. In this case, neither heading 24.01 nor heading 24.03 precludes classification of mixtures. Therefore, it is necessary to consider whether the strip tobacco or the reconstituted tobacco imparts the essential character to the mixture.
10. Strip tobacco provides the greater weight and bulk to the product. According to the General Explanatory Notes, these factors may be taken into account as indicative of essential character. Based on the foregoing, the strip tobacco imparts the essential character to the mixture pursuant to GIR 3 (b).

Conclusion

11. BBS is a mixture of unmanufactured strip tobacco and reconstituted tobacco. The strip tobacco imparts the essential character to BBS. In as much as the unmanufactured strip tobacco is classified in heading 24.01, the BBS is classified in heading 24.01."

III. SECRETARIAT COMMENTS

Similar case in the past

12. The Secretariat has examined the classification of an apparently similar product in the past following a request by the Polish Administration. In April 1999 the Secretariat received a classification request from Poland concerning a product which, according to the description given, appears to be similar to the product which is described by the US Administration above. However, according to the Polish Administration, the percentage of homogenized tobacco in the mixture could vary from a few percent to more than 50 percent, while the "American" product contains 25 % of homogenized tobacco. In spite of this, the Secretariat is of the opinion that, from a classification point of view, the "Polish" product and the "American" product can be regarded as similar.
13. In its letter dated 20 May 1999, the Secretariat informed the Polish Administration that the product at issue did not seem to fulfil the processes specified in the Explanatory Note to heading 24.01 for "unmanufactured tobacco". Consequently, the Secretariat took the view that a mixture of unmanufactured blended strips of tobacco and homogenized tobacco, could not be classified as "unmanufactured" tobacco of heading 24.01. Accordingly, the Secretariat was of the view that this product should be classified in heading 24.03 (by application of GIR 1).

Classification of the "Basic Blended Strip (BBS)" at issue

14. It appears that the issue under dispute is whether this product should be classified under the provisions of GIR 1 or GIRs 2 (b) and 3 (a). While the Secretariat took the view that this product should be classified by application of GIR 1, the US Administration is apparently of the view that GIRs 2 (b) and 3(b) should apply (see paragraphs 9 to 11 above).
15. Mixtures are, of course, normally classified according to GIRs 2 (b) and 3 (b), but there are exceptions to the rules; for example, items (X) and (XII) of the Explanatory Note to GIR 2 (b) (pages 2 and 3) as described below :

"(X) Rule 2 (b) concerns mixtures and combinations of materials or substances, and goods consisting of two or more materials or substances. The headings to which it refers are headings in which there is a reference to a material or substance (e.g., heading 05.03 - horsehair), and headings in which there is a reference to goods of a given material or substance (e.g., heading 45.03 - articles of natural cork). It will be noted that the Rule applies only if the headings or the Section or Chapter Notes do not otherwise require (e.g., heading 15.03 - lard oil, **not ... mixed**).

Mixtures being preparations described as such in a Section or a Chapter Note or in a heading text are to be classified under the provisions of Rule 1.

(XII) It does not, however, widen the heading so as to cover goods which cannot be regarded, as required under Rule 1, as answering the description in the heading; this occurs where the addition of another material or substance deprives the goods of the character of goods of the kind mentioned in the heading."

16. The text of heading 24.01 refers to "unmanufactured tobacco". The only processes specified in the legal texts for unmanufactured tobacco are stemming and stripping (see subheading texts of that heading).
17. The Explanatory Note concerning "unmanufactured tobacco" (page 189) refers to many other processes which are not expressly mentioned in the subheading texts. According to the Explanatory Note to this heading (page 189), the heading covers such tobacco "in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking)". It is further stated that heading 24.01 covers "tobacco leaves which are "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour". Other processes, e.g., blending, are not referred to.
18. GIR 2 (b) applies only if the headings or the Section or Chapter Notes do not otherwise require (see paragraph 15 above). In this case, the Secretariat is of the view that heading 24.01, which refers to "unmanufactured tobacco", precludes the application of GIR 2 (b). Then, the main question is whether the blending of 75 per cent strip tobacco leaves with 25 per cent reconstituted tobacco (by controlled layering in a silo) has deprived the product of the character of goods of the kind mentioned in heading 24.01.
19. The Secretariat has already indicated its opinion as to this question, but leaves it to the Committee to decide whether "Basic Blended Strip (BBS)" should be classified under the provisions of GIR 1 or GIRs 2 (b) and 3 (a). The Committee is also invited to rule on the classification of this product.
20. Finally, the Secretariat would like to note that it has also received comments from the Czech Republic on this item, which are basically identical to the note from the United States; namely, BBS should be classified in heading 24.01 by application of GIR 3 (b).

IV. CONCLUSION

21. The Committee is invited to :
- (i) rule on the classification of "Basic Blended Strip (BBS)", described in paragraphs 2 to 5 above, taking into account the US Administration's comments and the Secretariat comments in paragraphs 14 to 18 above;
 - (ii) decide what further action should be taken to reflect the Committee's decision.

<p>Tobacco mixture, consisting of a mixture of (1) uncut stemmed leaves (i.e., "strip,") of cured Virginia, Burley and, in some instances Oriental tobacco, and (2) reconstituted tobacco. The strip tobacco leaves and the reconstituted tobacco are mixed together by controlled layering in a silo. The strip tobacco represents 75% of the total mixture by weight, and the reconstituted tobacco represents 25% of the total mixture by weight.</p>
--