



SCIENTIFIC SUB-COMMITTEE

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Brussels, 17 December 1998.

POSSIBLE UPPER LIMIT OF COCOA CONTENT FOR PRODUCTS OF HEADING 17.04

(Item II.14 on Agenda)

Reference documents :

42.035 (HSC/22)
42.750 Annex H/1 (HSC/22 - Report)

I. BACKGROUND

1. At its 22nd Session (November 1998), the Harmonized System Committee, at the request of the Maltese Administration, examined the classification of certain sugar confectionery said to contain small amounts of cocoa ("Orfina", "Vienna", "Hartmint", "Cristal Fruit" and "Anise" of the TREFIN brand).
2. The question before the Committee was whether the presence of trace amounts of cocoa, which were said to be for technical reasons, should be tolerated for products of heading 17.04 or such products should be classified in Chapter 18.
3. The Committee noted that the information about cocoa content in the products at issue was contradictory. The manufacturer had stated that the products contained small amounts (varying from 0.015% to 0.057%) of cocoa, whereas most of the Customs laboratories which had tested the samples had not been able to detect any cocoa. One of the four Customs laboratories consulted had indicated that cocoa was present in four products (with the exception of "Orfina") in an amount less than 0.01%. However, according to the manufacturer, "Orfina" contained more cocoa (0.057%) than the other products.
4. With regard to the classification of the products at issue, it was pointed out that, according to Note 1 (a) to Chapter 17, sugar confectionery containing cocoa was excluded from Chapter 17 and classified in heading 18.06. The General Explanatory Note to heading 18.06 amplified this provision, indicating that preparations containing cocoa, in any proportion, were classified in Chapter 18.

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5. The Committee eventually decided to classify all five products in heading 17.04, agreeing that the decisions took account of the manufacturer's information that the products, for technical reasons, contained minute quantities of cocoa (i.e., 0.015% to 0.057%), but were made on the basis that cocoa had not been detected with certainty by the Customs laboratories consulted. Consequently, the products could not be regarded as containing cocoa for the purposes of classification in heading 18.06 by application of Note 1 (a) to Chapter 17.
6. The Committee also agreed to ask the Scientific Sub-Committee to consider a threshold for detectable cocoa content in sugar confectionery and the analytical method to be applied therefor.

II. SECRETARIAT COMMENTS

7. For the ease of reference, relevant information from the working document (Doc. 42.035) for the HS Committee are reproduced below :
 - (i) Information from the manufacturer
8. "'Orfina" contains 570 ppm (parts per million) cocoa powder added as flavour (0.057 %) "Vienna" contains 320 ppm cocoa powder (0.032 %) "Hartmint", "Cristal Fruit" and "Anise" contain 150 ppm cocoa powder (0.015 %).
9. These items are hard-boiled candies and have the inconvenience to be hygroscopic (attract humidity). For a caramel this is not too bad, but for a clear transparent candy this humidity begins to be visible already after a few weeks and it makes the product sticky and the transparency disappears. Of course, then the appearance of the product is not so nice anymore and it loses its attraction. Therefore, we have found out that the addition of some cocoa powder not only hides the turbidity but also helps in the prevention of attracting humidity. Furthermore, it makes the product a little bit rougher or less smooth. As we are not using any artificial colourings or flavours in our products, the addition of the cocoa powder is a good alternative but, of course, we cannot add a lot more since in that case the product would look really brown and the appearance would not be nice."
- (ii) Information from the Maltese Administration
10. The Maltese Administration requested the Laboratory of the Government Chemist, United Kingdom, to analyse samples of the products with the aim of determining whether they contained cocoa. According to the analysis carried out by the UK laboratory, the products were found not to contain cocoa or if, cocoa was present, it was of less than detectable quantity.

(iii) Information from the Belgian Administration

11. The Belgian Customs laboratory, after analysing the samples obtained from the manufacturer, had concluded that the cocoa content, if any, was less than detectable, whereas two independent private laboratories had been able to determine minute quantities of cocoa (120 ppm and 183 ppm, respectively) in the "Hartmint" type (the only type examined by the private laboratories).

(iv) Results of laboratory analysis by Canada and Japan

12. No detectable cocoa on the basis of HPLC determination of theobromine and caffeine. However, owing to the limit of detection associated with this method, if present, any cocoa in these samples could represent no more than 0.02 % by weight. (Canada)
13. Cocoa was determined to exist in "Vienna", "Hartmint", "Cristal Fruit" and "Anise", whereas it was questionable whether "Orifina" contained cocoa. However, the content of cocoa (cocoa calculated on a totally defatted basis) would be less than 0.01 %. (Japan)
14. It is clear from the information above that the determination of cocoa content poses problems at low concentrations. It is interesting to note that the product "Orifina" which reportedly had the maximum amount of cocoa (0.057%, see paragraph 8 above), gave a negative result on testing in all laboratories. If this is taken as an indication, the Secretariat considers that the minimum cocoa content that could be determined with certainty in a laboratory should be above 0.057% by weight, say 0.1% (on a totally defatted basis), and for that purpose a standard test method should also be prescribed. In this connection, the Sub-Committee's attention is invited to Note 3 to Chapter 22 which prescribes an alcoholic strength by volume not exceeding 0.5% vol. for "non-alcoholic beverages".

III. CONCLUSION

15. Taking the above information and comments into account, the Sub-Committee is invited to express its views on a threshold for detectable cocoa content in products of heading 17.04 (sugar confectionery) and to suggest the most appropriate analytical method to be used for determining that cocoa content.
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