



HARMONIZED SYSTEM
COMMITTEE

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DEFINITION OF FOOD PREPARATIONS

(item VIII.2 on Agenda)

Reference documents :

- 41.586 (HSC/21)
- 42.100, Annex IJ/1, (HSC/21 - Report)
- 42.440 (HSC/22)
- 42.750, Annex G/14, (HSC/22 - Report)

I. BACKGROUND

1. During its 22nd Session the Harmonized System Committee continued the examination of the possibility of establishing a definition of "food preparations" on the basis of Doc. 42.440.
2. The Delegate of Korea, re-affirming his Administration's concerns raised at the 20th Session, said that it was important that the study on the definition of food preparations be continued in order to resolve the difficulties being experienced in distinguishing food preparations from mixtures for classification purposes. This would assist the administration of tariff policies in the agricultural sector and to check classification fraud. He agreed that the criteria suggested by Korea might not be perfect, but could be used as a basis for the study.
3. Several delegates spoke in support of Korea's suggestion to pursue the study of the definition of food preparations. It was also suggested that the food manufacturing industry be consulted with a view to establishing criteria based on industry practice. The criteria mentioned in paragraphs 3 and 49 of Doc. 42.440 could be the starting point.
4. The Delegate of the EC reiterated his view that, establishing a general definition of "preparations" for the purposes of the HS was difficult, as the term was used in different contexts with varying scope. He stated that it was clear from the examples given in the working document that past attempts in this direction were fruitless. In his view, the present practice of classification on a case by case basis was appropriate. However, the EC was not against the proposed study, if the Committee wished to pursue the matter. He was sceptical

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about the applicability of certain criteria suggested by Korea in paragraph 3 of Doc. 42.440. He preferred that the study not be based on any specific criteria. The Secretariat should be given a free hand in deciding how to undertake the study.

5. After discussion, the Committee instructed the Secretariat to continue with the study of the definition of food preparations, taking into account the criteria suggested in paragraphs 3 and 49 of Doc. 42.440, and to report its findings to the Committee at a future session. Interested administrations were advised to submit their comments and proposals to the Secretariat to assist in its study.

II. COMMENTS FROM ADMINISTRATIONS

6. In December 1998, the Secretariat wrote to the following 16 Customs Administrations : Argentina, Australia, Brazil, Canada, China, India, Japan, Kenya, Korea, Morocco, Norway, South Africa, the United States, Switzerland, Zimbabwe and the European Community, asking for comments and proposals, in order to enable the Secretariat to prepare a new working document for this session. The Secretariat received answers from Canada, India, Korea and Switzerland. Their answers are reproduced below.

Comments from the Canadian Administration :

7. "This is a very broad topic of discussion and it may be somewhat difficult to arrive at a consensus on such an issue.
8. The Canadian Administration, after having reviewed this matter, has determined that it will not suggest a proposal for this Nomenclature subject.
9. There may be some value in considering retaining the status quo with respect to the way the HS Nomenclature approaches the subject of the coverage of the expression "food preparations".

Comments from the Korean Administration :

10. "Regarding the definition of "food preparations", Korea suggested the criteria in paragraph 3 of Doc. 42.440 and has been reviewing it. Currently, we have no particular comments on it. But, we will continue our own study on the criteria as the matter pursued and provide comments and opinions, if we have any.
11. On the other hand, it would be of great help with our own study and we would appreciate if the WCO and other Customs administrations offer their comments on the above criteria."

Comments from the Indian Administration :

12. "The documents received from you were forwarded to our Government and they have now informed that it is not feasible to provide classification based on unspecific food preparations like health food, innovative food, supplementary food, etc. The Ministry has suggested that food preparations/products which have been specified, e.g., where specifications have been laid down by Codex, may be covered under the Harmonized System."

Comments from the Swiss Administration :

13. "In reply to your fax message of 15 December 1998, the Swiss Administration has the following comments on the drafting of a definition of "food preparations" within the meaning of the Harmonized System Nomenclature.
14. The Swiss Administration would start by pointing out that the term "preparations" is in itself an open term which leaves plenty of scope for interpretation. It was for that reason that it was knowingly included in the legal texts of the Nomenclature. As a result, in practice this term has a meaning whose scope can vary according to the context in which it is used. This means that each case is an individual one which has to be analysed on its own merits within the framework of the heading texts, the Legal Notes and the resulting Nomenclature structure. Switzerland feels that this term cannot be delimited by a definition whose purpose would be to restrict its scope.
15. The Swiss Administration also points out that an analysis of the Chapters relating to foodstuffs (Chapters 1 to 23) shows that many food preparations are covered either explicitly or implicitly in the text of many headings or by specific Legal Notes. The texts at issue generally also set framework conditions for classification in a specific heading. The preparations covered by these headings are also described in the corresponding Explanatory Notes, and they consequently require no additional definition.
16. In the light of the foregoing, the Swiss Administration is against defining the term "food preparations" within the meaning of the HS Nomenclature. At the very most, it could give its backing to a definition of the type proposed by the Secretariat in paragraph 49 of Doc. 42.440. However, it does not feel that a definition of the type envisaged by Korea would provide a solution to this matter, and cannot therefore support this proposal.
17. The Swiss Administration feels that any possible definition should be included in the Explanatory Notes. As the Nomenclature currently stands, the creation of a Legal Note at Chapter or Section level would be inappropriate and should be opposed. Switzerland regrets that it is unable to provide more specific proposals."

III. SECRETARIAT COMMENTS

18. The Secretariat would like to thank the four administrations which have forwarded their comments to the Secretariat. Nevertheless, the Secretariat feels that this information is not sufficient to form a concrete idea with regard to the definition of "food preparations". Moreover, the Secretariat does not have clear-cut ideas on a definition at this stage.
19. The Secretariat still believes that the suggestions made in paragraph 49 of Doc. 42.440 could provide a general guideline for the classification of food preparations and, on that basis, that a case-by-case approach should be taken to the classification of these products.

IV. CONCLUSION

20. The Committee is requested to consider the comments submitted by Canada, India, Korea and Switzerland in paragraphs 7 to 17 above, as well as the Secretariat's comments in paragraphs 18 and 19 above, when examining this Agenda item.