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ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM  
COMMITTEE

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CLASSIFICATION OF THE "SMIRNOFF MULE" BEVERAGE

(Item IX.29 on Agenda)

I. BACKGROUND

1. On 3 September 1998, the Secretariat received an enquiry from the Polish Customs Administration concerning the classification of "Smirnoff Mule", a ready-to-drink alcoholic (5.5% by volume) beverage, made from ginger beer to which vodka and carbon dioxide have been added. A sample of the product will be made available to delegates for examination during the meeting.
2. The issue under dispute is whether the product should be considered as an "other fermented beverage" to be classified in heading 22.06, or whether it would be more appropriate to classify the product in heading 22.08 ("other spirituous beverages").

II. DESCRIPTION OF THE PRODUCT IN QUESTION

3. According to the information provided by the Polish Administration, the beverage is obtained as follows :
  - (i) ginger is fermented to an alcoholic strength of 12-14.5% by volume;
  - (ii) the obtained "ginger beer" is diluted with water to an alcoholic strength of 1.5% by volume. Subsequently, sugar (saccharose), citric acid, flavours and caramel are added;
  - (iii) the resultant preparation is fortified with Smirnoff vodka (40% by volume) to an alcoholic strength of approximately 5.5% by volume and carbon dioxide is added.

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4. In its letter dated 23 September 1998, the Secretariat informed the Polish Administration that the product at issue seemed to be a “fermented beverage” (made from ginger), which has not been further processed than permitted according to the Explanatory Note to heading 22.06 (i.e., by the addition of alcohol and carbon dioxide). Consequently, the Secretariat advised the Polish Administration to classify “Smirnoff Mule” in heading 22.06.
5. The full text of the Secretariat’s reply is reproduced in Annex I to this document.
6. On 7 January 1999, the Secretariat received a letter from the Polish Customs Administration requesting the Secretariat to submit the classification of the “Smirnoff Mule” beverage to the Harmonized System Committee for consideration. The full text of the comments submitted by the Polish Administration is reproduced in Annex II.

### III. SECRETARIAT COMMENTS

7. According to the Explanatory Note to heading 22.06, Item (10) (page 177), that heading includes :  
  
“(10) **Ginger beer and herb beer**, prepared from sugar and water and ginger or herbs, fermented with yeast”.  
  
In the following paragraph, it is further stated that :  
  
"All these beverages may be either naturally sparkling or artificially charged with carbon dioxide. They remain classified in the heading when fortified with added alcohol or when the alcohol content has been increased by further fermentation."  
  
8. From the above-cited Explanatory Note the Secretariat concluded that the beverage at issue should be classified in heading 22.06 (see Annex I to this document).
9. The Polish Administration, however, considers that the dilution of a fermented beverage to an alcoholic strength of 1.5% by volume, and subsequently fortifying it with vodka (of an alcoholic strength of 40% by volume) to an alcoholic strength of 5.5% by volume, excludes the beverage from heading 22.06, because 75% of the amount of the alcohol in the beverage is alcohol of heading 22.08.
10. The point at issue is whether this beverage is a fortified fermented beverage of heading 22.06 or a diluted spirituous beverage of heading 22.08. Technical literature consulted by the Secretariat does not give a clear answer to the question. According to “The New Shorter Oxford English Dictionary”, the term “fortified” means “*strengthen with alcohol, esp. a spirit*”, while “dilute” is defined as “*make (a liquid) thinner, weaker, or less concentrated by adding water or other solvent*”.
11. A study undertaken by the Secretariat concerning the history of the Explanatory Note to heading 22.06 with regard to the sentence “*They remain classified in the heading when fortified with added alcohol*” revealed that this text was transferred from the Explanatory Note to CCCN heading 22.07, without any modification. Furthermore, this text was based on the proposal by the United Kingdom made to the Explanatory Notes Revising Committee (November 1954). In its reasoning for this proposal (Doc. 2503 E (54)), the United Kingdom

gave the following reason : "It is presumably intended that fortified cider, fruit wines, etc., should remain in this heading in the same way as fortified wine of fresh grapes remains within heading 22.05. We consider that this should be stated."

12. The Explanatory Notes Revising Committee adopted the text as it now stands, but in the report of the meeting (Doc. 3309 E (54)), the following statement was given :

*"It was, of course, agreed that if a sufficiently high proportion of alcohol is added, the product ceases to be a fortified wine and becomes a spirituous beverage of heading 22.09 (22.08)."*

However, the Explanatory Notes Revising Committee did not indicate an upper limit for the fortification permitted in heading 22.06.

13. In the Secretariat's view, it seems that "Smirnoff Mule" is produced to "imitate" a drink (or a "cocktail") which is normally consumed in a bar or a restaurant. According to Internet Web sites (e.g., [www.webtender.com](http://www.webtender.com)), "Mule" (or "Moscow mule") is known as a drink with vodka, ginger beer and lime juice as the basic ingredients. In the process of mixing such drinks, ginger beer and lime are normally added to the vodka, thus diluting the vodka. Classifying such drinks as "fermented beverages" fortified with alcohol seems, in the Secretariat's opinion, questionable.
14. The question before the Committee is, therefore, to decide whether the production method (the sequence of adding the different ingredients to make a beverage) or the character of the final product should be the determining factor in classification.
15. If the Committee opts for the latter alternative, "Smirnoff Mule" could, in the Secretariat's view, be classified in heading 22.08.

#### IV. CONCLUSIONS

16. The Committee is requested to determine whether "Smirnoff Mule", a ready-to-drink alcoholic (5.5% by volume) beverage, made from ginger beer to which vodka and carbon dioxide have been added, can be regarded as a "fermented beverage" of heading 22.06 or as an "other spirituous beverage" of heading 22.08 (subheading 2208.90), and to indicate whether any further action should be taken to clarify the position.

A ready-to-drink alcoholic beverage (alcoholic strength of 5.5% by volume) made from ginger beer (alcoholic strength of 1.5% by volume) to which vodka and carbon dioxide have been added.

x

x      x

SECRETARIAT's REPLY TO THE POLISH ADMINISTRATION

Description :

"According to the information provided, "Smirnoff Mule" is a ready-to-drink alcoholic (5.5% by volume) beverage made from ginger beer to which vodka and carbon dioxide have been added.

The beverage is obtained in the following way :

- 1) ginger is fermented to an alcoholic strength of 12 - 14.5 % by volume;
- 2) the obtained "ginger beer" is diluted with water to an alcoholic strength of 1.5% by volume. Subsequently, sugar (saccharose), citric acid, flavours and caramel are added;
- 3) the resultant preparation is fortified with Smirnoff vodka (40% by volume) to an alcoholic strength of approximately 5.5% by volume and carbon dioxide is added.

Classification :

The issue under dispute is whether the beverage should be classified in heading 22.06 ("other fermented beverages"), as believed by the importer, or whether it would be more proper to heading 22.08 ("other spirits"), as believed by your Administration.

Your Administration is of the view that the dilution of the fermented beverage ("ginger beer") to an alcoholic strength of 1.5% by volume and the subsequent fortification with vodka to an alcoholic strength of 5.5% excludes the beverage from heading 22.06 because about 75% of the amount of alcohol in the finished beverage is alcohol from heading 22.08.

The importer, on the other hand, is of the opinion that the product fulfils the requirements of heading 22.06.

Heading 22.06 covers all fermented beverages, other than beer made from malt (heading 22.03) and beverages made from fresh grapes (headings 22.04 and 22.05).

According to the Explanatory Note to heading 22.06 such fermented beverages remain classified in the heading when fortified with alcohol. Furthermore, carbon dioxide may also be added to the beverages of heading 22.06.

The heading includes, *inter alia*, "ginger beer" prepared from sugar, water and ginger (see Item (10) of the Explanatory Note to the heading, page 177).

Based on the information available, the Secretariat is of the view, that the product at issue is a "fermented beverage" (made from ginger), which has not been further processed than permitted according to the provisions of the Explanatory Note to heading 22.06 (i.e., addition of alcohol and carbon dioxide). Consequently, the Secretariat would classify "Smirnoff Mule" in heading 22.06."

x  
x        x

NOTE FROM THE POLISH ADMINISTRATION

“According to the declaration included in fax No. 98.N 1038 - H/FI of 23 September 1998, I kindly ask you to present the problem regarding the tariff classification of the product of the trade name “Smirnoff Mule” to the Harmonized System Committee.

The product of the trade name “Smirnoff Mule” is an alcoholic beverage obtained by adding diluted ginger beer to Smirnoff vodka.

That sort of product is being obtained in the following way :

Ginger is subjected to fermentation process, the result of which ginger beer of 14.5% alcoholic strength is obtained.

Ginger beer of 14.5% alcoholic strength is being diluted to the strength of 1.5% with water and the addition of sugar, caramel, some additives identical to natural ones and with citric acid.

The product obtained in such way is being fortified to 5.5% volume strength by adding some 40% Smirnoff Vodka and then carbonated. The product of 5.5% volume strength, obtained in the mentioned way, is named “Smirnoff Mule”.

The Polish Customs Administration is acquainted with the comment to the heading 22.06 included in the Explanatory Notes to HS (pages 177 and 178) - according to that comment the heading 22.06 covers :

- 1) all fermented beverages other than those covered by headings 22.03 to 22.05;
- 2) fermented beverages fortified with alcohol;
- 3) fermented beverages in a mixture with non-alcoholic ones (soft drinks), and
- 4) mixtures of fermented beverages covered by headings 22.03 to 22.05.

From the contents of the comment it does not result explicitly that a diluted fermented, fortified with alcohol beverage, is classified in heading 22.06.

14.5% volume strength of ginger beer as well as ginger beer diluted with water to 1.5% volume strength and flavoured with sugar, citric acid, caramel and flavouring essence should be classified in heading 22.06.

However, I doubt if 5.5% volume strength alcoholic beverage - strength and character of which have been given by Smirnoff vodka (the alcohol from heading 22.08) fulfils the requirements of heading 22.06, because ginger beer diluted to 1.5 % strength, in my opinion, can be used only in order to give flavour because of aromatic and flavouring nature of ginger.

In my opinion, the mule obtained by mixing vodka and diluted fermented beverage fulfils the requirements of heading 22.08.”

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