



HARMONIZED SYSTEM  
COMMITTEE  
-  
26<sup>th</sup> Session  
-

NC0292E1  
(+ Annexes I to IV)  
O. Eng.

Brussels, 6 October 2000.

AMENDMENT OF THE EXPLANATORY NOTES  
ARISING FROM THE CLASSIFICATION OF "CHICKEN SAUCE"  
IN SUBHEADING 2103.90  
(Item VII.10 on Agenda)

Reference documents :

41.320 (HSC/20 and HSC/21)	NC0123E1 (HSC/24)
42.092 (HSC/21)	NC0160B1, Annex G/4 (HSC/24 – Report)
42.100, Annex IJ/2 (HSC/21 - Report)	NC0185E1 (HSC/25)
42.441 (HSC/22)	NC0208E1 (HSC/25)
42.750, Annex G/15 (HSC/22 - Report)	NC0250E2, Annexes G/3 and H/11 (HSC/25 – Report)
	00NL0369 - GI/FI

I. BACKGROUND

1. At its 22<sup>nd</sup> Session (November 1998), the Harmonized System Committee examined the classification of "CHICKEN TONIGHT - Oriental Sweet and Sour Sauce", containing visible pieces (1 to 2 cm in length and 0.5 to 1 cm in width) of vegetables (about 26 % : red peppers, onion, carrots and green peppers) and fruit (about 7 % : pineapple), sugar, vinegar, tomato purée, modified starch, white wine, salt, herbs and spices (including garlic and ginger), stabiliser (xanthan gum), soy sauce and water. The Committee decided, by 18 votes to 9, to classify the product in heading 21.03 (subheading 2103.90), by application of General Interpretative Rule 1.
2. At its 24<sup>th</sup> Session (October 1999), following a reservation entered by the Norwegian Administration, the HS Committee re-examined the classification of "CHICKEN TONIGHT - Oriental Sweet and Sour Sauce" and reconfirmed by 15 votes to 14 the classification of the product in subheading 2103.90.
3. To reflect the Committee's decision, the Secretariat was instructed to prepare a Classification Opinion for examination by the next pre-session Working Party and draft amendments to the Explanatory Notes for examination by the next session of the HS Committee. It was also decided that during the next revision of the Harmonized System, the

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Secretariat should prepare draft amendments to the legal texts to be examined by the Review Sub-Committee. In drafting these amendments the Secretariat could take into consideration the definition of sauces applied by the EC in its Combined Nomenclature and any other proposals to be submitted to the Secretariat by interested Contracting Parties.

4. At its 25<sup>th</sup> Session (March 2000), the HS Committee adopted a Classification Opinion with regard to the product in question. At the same time, it examined draft amendments to the Explanatory Notes to headings 20.01 and 21.03 based on a proposal from the Secretariat and a proposal submitted during the meeting by the Norwegian Delegation.
5. Referring to his proposal to introduce quantitative criteria in the Explanatory Note to heading 21.03 (which was the proposal set out in item (b) of paragraph 32 of Doc. NC0123E1), the Norwegian Delegate explained that the proposal was intended to lay down an objective criterion to distinguish sauces of heading 21.03 from products of Chapter 20. He argued that the Secretariat's proposal would make the scope of heading 21.03 too broad and a number of products currently falling in heading 20.01 or 20.05 would be transferred to heading 21.03.
6. Supporting the views expressed by the Norwegian Delegate, the EC Delegate indicated that the texts proposed by the Secretariat should be reviewed. He was of the view that the current quantitative reference to "very little solid matter" in the Explanatory Notes should not be replaced by quantitative criteria but by guidelines in respect of the volume of fruit or vegetables usually contained in sauces. In this regard, he recalled the Committee's instruction at the last session that the Secretariat could take into consideration the definition of sauces applied by the EC in its Combined Nomenclature and any other proposals to be submitted by interested Contracting Parties. He explained that the proposed texts by the Secretariat would make it difficult to distinguish between headings 21.03 and 20.05 with regard to products consisting of sauces with vegetables and vegetables put up in a sauce, and therefore stressed that further guidance should be given.
7. Another delegate expressed the view that since quantitative criteria were not reflected in the legal texts it would cause legal problems if such quantitative criteria were reflected only in the Explanatory Notes. He therefore opposed inserting quantitative criteria and indicated that the Secretariat's draft Explanatory Note text was a good start. He was of the view that commercial realities, such as how products were marketed and how they were used, should be reflected in the Explanatory Notes rather than quantitative criteria.
8. That delegate, while agreeing to proceed on the basis of the Secretariat's draft, however, indicated that the reference to "not intended to be eaten by themselves" might cause difficulty in distinguishing certain products of headings 20.01 and 20.05 from those of heading 21.03.
9. When a vote was taken to decide whether to work on the basis of the Secretariat's draft or with another alternative proposal reflecting quantitative guidelines, opinions were equally divided by 16 votes to 16. The Committee therefore instructed the Secretariat to prepare a new document, taking into account the Secretariat's original proposal, the proposal made by Norway and other proposals to be submitted by administrations, for examination at the next session.

## II. COMMENTS FROM ADMINISTRATIONS

10. In response to a letter sent to all Contracting Parties by the Secretariat, at the time of preparation of this document the Secretariat had received comments from the Administrations of Australia, Cuba, the Czech Republic, Lebanon, Norway, Poland, Senegal, Tunisia, Turkey, the United States and the EC (together with a few Members).
11. The Lebanese and Cuban Administrations indicated that they had no problem in identifying sauces of heading 21.03 as against the products of Chapter 20 and therefore were of the view that the current Explanatory Notes would not need to be amended. The Cuban Administration was against the inclusion of quantitative criteria.
12. The Australian and Senegalese Administrations supported the idea of working on the basis of the Secretariat's proposal. The Australian Administration was of the opinion that the commercial realities of how the products were marketed and how they were used should be reflected in the Explanatory Notes. They did not agree that the reference to "very little solid matter" should be replaced by criteria specifying that in order to be classified as a sauce, a certain percentage of the product had to pass through a sieve of a certain aperture at a particular temperature. The Senegalese Administration felt that problems might arise if there were quantitative criteria only in the Explanatory Notes and not in the legal Notes and therefore felt that it would be inappropriate to introduce quantitative criteria into the Explanatory Notes. It thus proposed inserting commercial details (how the product is marketed, used) as mentioned in paragraph 7 above.
13. The Polish Administration indicated that it would support the amendments to the Explanatory Notes to Chapters 20 and 21 proposed by the Secretariat and was of the opinion that the Explanatory Notes should be widened to reflect commercial realities, i.e., how products were marketed and how they were used, rather than quantitative criteria. In this connection, the Polish Administration proposed to delete the expression "preserved ... in tomato sauce" in paragraph 3 of the Explanatory Note to heading 20.05 (page 158) because sauces should not be regarded as preservatives. Otherwise "Uncle Ben's Sweet-sour sauce" would be classified in heading 20.05 but a product, such as "Chicken Tonight", would be classified in heading 21.03.
14. Also supporting the Secretariat's proposal, the Administrations of the United States and the Czech Republic forwarded their comments with proposed amendments. These proposals are set out in Annexes I and II, respectively, to this document.
15. On the other hand, the Customs Administrations of Tunisia and Turkey indicated that they preferred to work on quantitative guidelines and supported the idea of working on the basis of the proposal submitted by Norway during the meeting of the 25<sup>th</sup> Session of the Committee.
16. The Norwegian Administration and the EC, confirming their previous positions regarding the introduction of quantitative criteria, forwarded their proposals. These are set out in Annexes III and IV, respectively.

### III. SECRETARIAT COMMENTS

17. Of the 11 administrations that submitted comments to the Secretariat, seven administrations were in favour of the Secretariat approach, while four administrations preferred quantitative criteria.
18. As regards the former, the United States and the Czech Republic submitted the texts of amendments to the relevant Explanatory Notes.
19. The United States proposed to delete the reference to “not intended to be eaten by themselves” from the Secretariat's proposal regarding the Explanatory Note to heading 21.03 (see the Annex to Doc. NC0208B1) and has attempted to distinguish certain products between heading 21.03 and Chapter 20. In view of the concerns expressed at the 25<sup>th</sup> Session (see paragraph 8 above), the Secretariat would agree with this proposal. The US dropped the references concerning the form of the products, i.e., liquids, emulsions or suspensions, from the same Explanatory Note, probably to make it less restrictive. The Secretariat could also agree with these modifications.
20. The Czech Republic proposed the introduction of a new Item (8) in the General Explanatory Note to Chapter 20 in place of the second paragraph of the Explanatory Note to heading 20.01. The Czech Administration has attempted to generalise the issue for all concerned headings in Chapter 20. As regards the Explanatory Note to heading 21.03, the reference to “vegetables or fruits” has been expanded by including nuts and other edible parts of plants. Subject to the modification as mentioned in paragraph 19 above as well as other necessary modifications, the Secretariat could accept the Czech approach as well. The Czech Administration also proposed a new Note 4 to Chapter 21. However, any legal amendments should first be examined by the Review Sub-Committee and therefore the Secretariat did not reproduce this text.
21. The EC's proposal was intended to combine the Norwegian proposal made at the 25<sup>th</sup> Session with that of the Secretariat. This proposal contains criteria in respect of the volume of vegetables or fruit usually contained in sauces, i.e., "not normally exceeding 40%". This proposal together with the original Norwegian proposal, which the EC also supports, is reproduced in Annex III. The new comments from Norway also indicated that Norway would prefer quantitative criteria similar to the EC, although Norway did not express concrete figures (see Annex IV). The Tunisian and Turkish Administrations supported work on the basis of quantitative criteria.
22. As can be seen from the above, opinions are divided as to whether or not quantitative criteria should be introduced in the Explanatory Notes and therefore the Secretariat considers that the Committee should first take a decision in this regard. On that basis, the Committee could work on the amendments to the relevant Explanatory Notes, taking into account the comments as set out in Annexes I to IV.

### III. CONCLUSION

23. The Committee is invited to consider whether the amendments to the Explanatory Notes should reflect quantitative criteria and then examine the proposals submitted by the United States, Czech Republic, the EC and Norway in Annexes I to IV to this document, taking into account the Secretariat comments in paragraphs 17 to 22 above.

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**COMMENTS BY THE U.S. ADMINISTRATION**

"CHAPTER 20.

Page 156. Heading 20.01. Second paragraph.

Delete and substitute :

"The goods covered by this heading differ from the sauces of **heading 21.03** in that the latter are not intended to be eaten as separate food dishes by themselves but rather are added to food dishes to add flavouring or moisture or to provide a contrast in texture or colour."

CHAPTER 21.

Page 168. Heading 21.03. Item (A). Second paragraph.

Delete and substitute :

"Sauces are normally added to a food dish while the dish is being cooked (e.g., tomato sauce added to a meat dish while being cooked) or prior to serving the dish (e.g., a sauce served over pasta). Sauces provide flavour, moisture, and a contrast in texture and colour. They may also serve as a medium in which a food dish is contained (e.g., the velouté sauce of creamed chicken). Seasoning liquids (e.g., soy sauce, hot pepper sauce, fish sauce) are used both as ingredients in cooking and at the table as condiments.

The sauces of this heading differ from the prepared or preserved vegetables and fruit of Chapter 20 in that the former are not intended to be eaten as separate food dishes by themselves but rather are added to food dishes to add flavouring or moisture or to provide a contrast in texture or colour."

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**COMMENTS BY THE CZECH ADMINISTRATION**

CHAPTER 20.

Page 156. General. New Item (8).

Insert the following new Item (8) :

“(8) Products of heading 20.01, 20.04, 20.05, or 20.08 differ from sauces and preparations therefor of heading 21.03 in that the latter are mainly liquids, emulsions or suspensions, which are not intended to be eaten by themselves but are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes.”

CHAPTER 21.

Page 168. Heading 21.03. Item (A). Second paragraph.

Delete and substitute :

“Sauces and preparations therefor are normally added to a food as it cooks or as it is served. Sauces and preparations therefor provide flavour, moisture, and a contrast in texture and colour. They may also be served as a medium in which food is contained, for example, the velouté sauce of creamed chicken. Seasoning liquids (soy sauce, hot pepper sauce, fish sauce and so on) are used both as ingredients in cooking and at table as condiments.

The heading also includes certain preparations, based on vegetables, fruit, nuts and other edible parts of plants, which are mainly liquids, emulsions or suspensions, and sometimes contain visible pieces of vegetables, fruit, nuts and other edible parts of plants. These preparations differ from prepared or preserved vegetables, fruit, nuts and other edible parts of plants of Chapter 20, (for example vegetables preserved by vinegar or acetic acid of heading 20.01, beans with mayonnaise of heading 20.05, etc.) in that they are not intended to be eaten themselves but they are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes.”

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### **COMMENTS BY THE EUROPEAN COMMUNITY**

"At its 25<sup>th</sup> Session, the HS Committee examined the amendment of the Explanatory Notes arising from the classification of "chicken sauce" ("Chicken Tonight").

Following an extensive discussion, the Committee decided to defer the examination of this issue to its 26<sup>th</sup> Session in November 2000. It instructed the Secretariat to prepare a new document taking into account the Secretariat's original proposal, the proposal made by Norway and other proposals to be submitted by administrations.

Against this background and in the interest of compromise, an EC proposal based on the proposal drafted by the Secretariat (Doc. NC0208E1) is set out below. This proposal contains criteria for guidelines in respect of the volume of vegetables or fruit usually contained in sauces.

This proposal seeks to combine Norway's proposal with that of the Secretariat. However, the EC would also be willing to accept the Norwegian proposal made at the HS Committee's 25<sup>th</sup> Session, even if the adverb "normally" were added to it to make it less restrictive.

### **PROPOSAL**

#### CHAPTER 20.

Page 156. Heading 20.01. Second paragraph.

Delete and substitute :

"The goods covered by this heading differ from sauces of heading 21.03 in that the latter are mainly liquids, emulsions or suspensions, which are not intended to be eaten by themselves but are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes."

#### CHAPTER 21.

Page 168. Heading 21.03. Item (A). Second paragraph.

Delete and substitute :

"Sauces are normally added to a food as it cooks or as it is served. Sauces provide flavour, moisture, and a contrast in texture and colour. They may also serve as a medium in which food is contained, for example, the velouté sauce of creamed chicken. Seasoning liquids (soy sauce, hot pepper sauce, fish sauce) are used both as ingredients in cooking and at table as condiments.

The heading also includes certain preparations, based on vegetables or fruit, which are mainly liquids, emulsions or suspensions, and sometimes contain visible pieces of vegetables or fruit **in a percentage not normally exceeding 40% of the preparation's weight**. These preparations differ from prepared or preserved vegetables and fruit of Chapter 20, e.g., preparations known as pickles or mustard pickles (heading 20.01), in that they are used as sauces, i.e., as an accompaniment to food, or used in the preparation of certain food dishes, but not intended to be eaten by themselves."

PROPOSAL BY NORWAY (submitted at the 25<sup>th</sup> Session)

Delete "containing very little solid matter" and replace by a full stop and insert :

"The expression "sauces" does not **normally** cover a preparation of vegetables, fruit or other edible parts of plants if the percentage of these ingredients passing through a metal wire sieve, with an aperture of 5 mm, is, after rinsing with water of a temperature of 20 °C, less than 60% by weight, calculated on the original preparation."

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**COMMENTS BY NORWEGIAN ADMINISTRATION**

"We have found the task rather difficult because of the problem of distinguishing products between headings 20.01 and 20.05 against 21.03 when taking into consideration the decision made by the Committee at the 25<sup>th</sup> Session regarding "Chicken Tonight".

However this is our proposal :

Explanatory Notes, page 156, heading 20.01, first paragraph, last sentence :

The reference to mustard pickles is to be deleted and transferred to sauces, examples at page 168.

Explanatory Notes, page 156, heading 20.01, second paragraph, delete and substitute :

"The goods covered by ... containing visible pieces of fruit, vegetable or other edible parts of plants in reasonable proportion in volume of a sauce."

Explanatory Notes, page 168, heading 21.03 (A), second paragraph, delete and substitute :

"Products under this heading differ from preserved products of fruit, vegetables or edible parts of plants of Chapter 20 (...) in that they are mainly liquids, emulsions or suspensions even if containing visible pieces of fruit, vegetables or other edible parts of plants in reasonable proportions in volume of a sauce".

Our proposal "in reasonable proportions" must be viewed to the fact that it describes sauces that normally are liquid.

In order to classify the different products in its respective headings, Norway would prefer quantitative criteria or guidelines in respect of the volume of fruit or vegetables usually contained in sauces, to describe the expression "reasonable proportions" !

We leave it to the Secretariat to find the best wording for this proposal.

Norway does not feel that how a product is marketed or how it is used should be reflected in the Explanatory Notes, as was suggested at the 25<sup>th</sup> Session. This is because it is against GIR 1 that states that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes."

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