



HARMONIZED SYSTEM
COMMITTEE

NC0384E1

-
27th Session
-

O. Eng.

Brussels, 28 March 2001.

CLASSIFICATION OF BAKERS' WARES (WAFFLES)

(RESERVATION BY THE EC)

(Item VIII.1 on Agenda)

Reference documents :

NC0069E1 (HSC/23)

NC0127E1 (HSC/24)

NC0146E1 (HSC/24)

NC0160E2, Annex G/8 (HSC/24 – Report)

NC0283E1 (HSC/26)

NC0340E2, Annex G/1 (HSC/26 – Report)

I. BACKGROUND

1. At its 23rd Session (May 1999) the Harmonized System Committee exchanged preliminary views on the classification of “Kellogg’s® Breadia” bakers’ wares (a kind of “waffles”), on the basis of Doc. NC0069E1.
2. After a short exchange of views, the Committee concluded that this classification issue should be settled at its next session in October 1999. On that basis, the Committee could decide what further action should be taken with regard to the legal texts and/or the Explanatory Notes.
3. At its 24th Session in October 1999, the Harmonized System Committee re-examined the classification of the waffles in question. After discussion, the Committee decided (by 18 votes to 10) to classify the waffles presented by Japan in Doc. NC0069E1 in subheading 1905.30 (by application of GIR 1).
4. By its letter of 21 December 1999, the EC asked the Secretary General of the WCO to refer the Committee’s decision to the Council, in accordance with the provisions of Article 8.2 of the HS Convention.
5. The Council, at its 95th/96th Sessions in July 2000, considered the EC reservation and it decided to refer the question of the classification of bakers’ wares (waffles) back to the Committee for re-examination.

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6. At its 26th Session in November 2000, questions were raised as to the composition of the waffles at issue. The Committee therefore, after discussion, agreed to postpone final discussion of this Agenda item until its next session. In the meantime, the Japanese Administration would carry out the necessary laboratory analysis as to the water content if it could obtain samples of the waffles in question. The Secretariat was asked to contact the manufacturer to obtain information on the exact composition (including the water content) of the product after it had been baked, but before being frozen.

II. SECRETARIAT ACTION

7. Acting on the Committee's instructions, the Secretariat contacted the manufacturer of "Kellogg's® Breadia" (Kellogg Consumer Affairs) in order to obtain their comments concerning the production process.

8. However, on 22 December 2000, the Secretariat received the following answer from Kellogg's (USA) :

"Thank you for contacting Kellogg Company concerning KELLOGG'S®BREADIA™ WAFFLES. We appreciate your interest in our company and products.

Our goal is to provide consumers with wholesome, high-quality foods, and we market a variety of cereals to give our consumers a choice in selecting products which will meet their taste preferences and nutritional needs.

We appreciate your inquiry, however, the manufacturing process information you are requesting is proprietary."

9. Moreover, on 11 January 2001, the Secretariat received the following letter from the Japanese Customs Administration :

"With regard to waffles, our efforts to obtain a sample of the products at issue for analysis were in vain because there were no products in Japan since they have not been imported for more than one year and, therefore, we can not provide the Secretariat with the analysis results.

However, according to the information obtained from the manufacturer through the importer, the moisture level of the frozen waffle is approximately 40 % when manufactured."

III. SECRETARIAT COMMENTS

10. From the above, it seems clear that it was not possible to obtain the information requested by the Committee at its last session. The manufacturer is not willing to submit the requested information, and it appears that the product has been withdrawn from the Japanese market. However, a decision on the classification has already been taken on the basis of the information submitted by Japan, and a reservation has been entered. Consequently, the Secretariat feels that there are two options for the Committee :
 - (a) The Committee can confirm or change the classification of this product, on the basis of the information already submitted by Japan in the basic document (Doc. NC0069E1, paragraph 1); or

- (b) Since the information requested by the Committee at its last session was not possible to obtain and the product is no longer imported into Japan, the Committee could decide not pursue this matter any further.

11. Regardless of the Committee's decision, the Secretariat feels that something has to be done with regard to the water content criterion in the Explanatory Note to heading 19.05. This reference can be taken out, or it can be raised to e.g., 15 %, as proposed by the EC in Doc. NC0283E1, paragraph 27. Another option could be to insert a new legal note defining waffles - with an agreed water content limit. Based on the Committee's decision, the Secretariat is ready to prepare a document for the Committee's 28th Session in November.

IV. CONCLUSION

12. The Committee is invited to express its views as to what further action should be taken in this respect.
