



HARMONIZED SYSTEM
COMMITTEE

-
31st Session

NC0689E1
(+ Annex)

O. Eng.

Brussels, 10 March 2003.

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTE TO HEADING 19.05

(Item VIII.2 on Agenda)

Reference documents :

NC0069E1 (HSC/23)	NC0422E1 (HSC/27)
NC0127E1 (HSC/24)	NC0430E2, Annex H/1 (HSC/27 – Report)
NC0146E1 (HSC/24)	NC0466E1 (HSC/28)
NC0160E2, Annex G/8 (HSC/24 – Report)	NC0510E2, Annex G/5 (HSC/28 – Report)
NC0283E1 (HSC/26)	NC0620E1 (HSC/30)
NC0340E2, Annex G/1 (HSC/26 – Report)	NC0655E2, Annex G/10 (HSC/30 – Report)
NC0384E1 (HSC/27)	

I. BACKGROUND

1. At its 30th Session, the Harmonized System Committee re-examined the classification of a product referred to as “**Kellogg’s Eggo Frozen Waffles**”. The Chairperson pointed out that two classification questions were involved with regard to this question : (1) whether the product at issue should be classified in the subheading for waffles (subheading 1905.32), regardless of its water content, and (2) whether the Explanatory Note to heading 19.05, limiting the water content in waffles to 10 %, should be taken into consideration.
2. At the outset of the discussion, the **US** Delegate underscored that “**Kellogg’s Eggo Frozen Waffles**” were fully baked waffles, as mentioned in the working document and as clearly shown in the photographs of the waffles in the Annex to the working document. Furthermore, since the product at issue was commercially and commonly known as a waffle, presented and traded as a waffle, known and purchased by consumers in retail stores as a waffle and satisfied the common definition of a waffle (i.e., a bakers’ ware baked between patterned metal plates), it should be classified in the HS Nomenclature as a waffle in subheading 1905.32, regardless of the water content limit relating to waffles in the Explanatory Note to heading 19.05.
3. The **EC** Delegate agreed that the products referred to in paragraph 32 of the working document, containing 10 – 13.7 % water, should be accepted as waffles. This meant that the current Explanatory Note to heading 19.05, setting out a 10 % water limit, was too restrictive. However, classifying the product at issue - with a water content of 48 % - as waffles, was a different matter. Moreover, he questioned whether a product should be classified in accordance with the name given to it by the manufacturer. This, in his view, was not

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acceptable with regard to the classification of products in the HS Nomenclature. Common sense had to be applied and the nature of the product had to be determined and, therefore, a product containing 48 % water could not be considered to be a waffle. Objective criteria, such as water content, were needed to distinguish between the many kinds of bakers' wares. He reminded the Committee that this product had already been classified by the Committee in subheading 1905.90, by application of GIR 1, in accordance with the existing legal texts, and not the Explanatory Notes.

4. Many delegates supported the view expressed by the **United States**. In this regard it was pointed out that the legal texts and not the Explanatory Notes were controlling, and thus, whether the waffles at issue contained 13 % water or 48 % water was irrelevant. With regard to the water content of the waffles at issue, it was pointed out that coming directly from the freezer such products would have a much higher water content than at room temperature; meaning that the water content criterion was not reliable.
5. On the other hand, many other delegates shared the opinion of the **EC**. In this regard, attention was called to the fact that dictionary definitions referred to waffles as "crisp" products. A product containing 48 % water could, in their view, not be regarded as crispy. Accordingly, such products had to be classified in subheading 1905.90 as "other" bakers' wares.
6. Following a lengthy discussion, when the question was put to a vote, the Committee decided, by 25 votes to 22, to classify "**Kellogg's Eggo Frozen Waffles**" in subheading 1905.32, by application of GIRs 1 and 6.
7. In order to reflect this decision, the Committee instructed the Secretariat to prepare a draft Classification Opinion for examination, in the first instance, by the next preessional Working Party (see item VII.2 on Agenda).
8. In addition, the Secretariat was instructed to prepare necessary amendments to the Explanatory Note to heading 19.05, Item (A) (9) for examination by the Committee at its next session.

II. SECRETARIAT COMMENTS

9. In the Explanatory Note to heading 19.05, Item (A) (9), there is a reference limiting the water content of waffles to 10 %. The Committee's decision as mentioned in paragraph 6 above clearly demonstrates that this reference is out of date. The Secretariat therefore simply suggests the deletion of this reference. In addition, since waffles are also traded internationally in a frozen state, the Secretariat has included a reference to such products in its proposal.
10. As pointed out in Doc. NC0069E1 (paragraph 17) and in Doc. NC0466E1 (paragraph 30, last part), the Explanatory Note to heading 19.05 also contains references to other water content limits (see Item (A) (4) defining "crispbread" and Item (A) (8) (b) defining "sweet biscuits"). In addition, Item (A) (8) (b) also contains provisions for the "base" (50 %) and the "fat content" (35 %). If the Committee agrees to delete the reference to the water content with regard to waffles, the Secretariat believes that similar amendments should be made to these texts, since the legal texts do not impose such limits. In that case, the Secretariat could prepare a working document for the Committee's next session with its proposals in this respect.

III. CONCLUSION

11. The Committee is invited to examine the draft amendments to the Explanatory Notes set out in the Annex, taking into account the Secretariat comments above.

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