



HARMONIZED SYSTEM
COMMITTEE

-
31st Session

NC0706E1
(+ Annexes I and II)
O. Eng.

Brussels, 7 March 2003.

CLASSIFICATION OF A BREAD-MAKING MACHINE

(Item IX.1 on Agenda)

I. BACKGROUND

1. By letter of 11 September 2002, the **Israeli** Customs Administration requested the Secretariat's advice on the classification of an automatic bread-making machine and on the scope of subheading 8516.60 vs. subheadings 8516.71 to 8516.79.
2. The Secretariat, by its letter of 26 September 2002, provided its advice to classify the machine at issue in heading 85.09 (subheading 8509.40) by application of GIRs 1 (application of Note 3 to Section XVI and the text of heading 85.09) and 6 (see Annex I to this document).
3. Following this advice, the **Israeli** Customs Administration, by its letter of 18 November 2002, urged the Secretariat to reconsider the arguments put forward and to agree on the classification of the machine at issue in heading 85.16 (subheading 8516.79) (see Annex II to this document). Given the apparent importance of this issue (i.e., the application of Section or Chapter Notes) and the opposite views of the **Israeli** Customs Administration and of the Secretariat, it was decided to submit this question to the Harmonized System Committee in order to rule on the application of the relevant Notes and the classification of the commodity at issue. The **Israeli** Customs Administration was informed accordingly by letter of 14 January. A copy of the machine's instruction manual will be available to delegates in the meeting room.

II. SECRETARIAT COMMENTS

4. Description of the commodity at issue :

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 2968

Electric household type machine for baking bread (dimensions : (l. x w. x h.) approximately 36 cm x 22 cm x 27 cm; weight : approximately 5.9 kg) (“Chromex® Prestige, RBM3015ASL-4-10-SS”), consisting a housing comprising a removable container (“bread pan”) in which the ingredients for bread dough can be mixed and baked. The bread pan has a rotating shaft for the removable kneading blade, which is connected to an electric motor once it is placed inside the machine. Electric heaters surrounding the container area are used to bake the bread. The machine has automatic programmes (which can be operated from a control panel on top of the machine) for kneading and baking and for kneading only. In the latter case, the prepared dough can be taken out in order to be baked in another appliance.

5. The Secretariat would like to point out first that the machine at issue concerns a type for use in the household. This view is, apparently, shared by the **Israeli** Customs Administration, given the proposed classification in heading 85.16 (which refers, among others, to “other electro-thermic appliances of a kind used for domestic purposes”).
6. The **Israeli** Customs Administration also seems to agree with the Secretariat that the machine at issue is a composite machine consisting of two machines fitted together to form a whole for the purpose of performing two functions (i.e., mixing the dough and baking the bread). Such a composite machine is to be classified as if consisting only of that component which performs the principal function, by virtue of the provisions of Note 3 to Section XVI. However, where it is not possible to determine the principal function, and where, as provided in Note 3 to Section XVI, the context does not otherwise require, it is necessary to apply General Interpretative Rule (GIR) 3 (c) (see the General Explanatory Note to Section XVI, part (VI), third paragraph, on page 1387).
7. The **Israeli** Customs Administration takes the view that when deciding upon the principal function of a composite machine, its overall design, purpose and any defining function which differentiates it from other machines must be taken into account. Since the design and purpose of the machine is to make bread and since the ingredients of bread only become bread by baking, the principal function of the machine at issue is the electro-thermic function (i.e., baking). Classification in heading 85.16 would, therefore, be appropriate. Alternatively, the **Israeli** Customs Administration considers that classification should be based on GIR 3 (c), which would also result in a classification in heading 85.16.
8. If the programme for mixing and baking is chosen, the two functions of the machine do not perform simultaneously but complementary, i.e., first the mixing and after that the baking process. In this context, it is to be noted that the machine at issue is marketed as a machine having two possible uses, i.e., (i) baking a loaf of bread from scratch (flour, yeast, water, etc.) and (ii) making dough for rolls or shaped loaves to be baked in a regular oven. To that effect, the programmes of the machine include an automatic programme for mixing dough. The machine has, however, no programme for baking (or heating) only. The Secretariat, therefore, takes the view that the kneading function is the principal one and that the commodity at issue should be classified on that basis, i.e., as a food mixer of the kind commonly used for domestic purposes, in heading 85.09 (subheading 8509.40), taking into account the provisions of Note 3 to Section XVI and Note 3 (a) to Chapter 85.
9. The observation of the **Israeli** Customs Administration that heading 85.09 does not apply to electro-thermic apparatus is correct. However, in the case at issue the Secretariat classified the apparatus by application of Note 3 to Section XVI, which stipulates in pertinent part that “[. . .] composite machines [. . .] are to be classified as if consisting only of that component or as being that machine which performs the principal function” (emphasis added). Consequently, the apparatus at issue consists, by legal definition, of a mixing

machine only and, therefore, the provisions of the second paragraph of Note 3 to Chapter 85 concerning the exclusion of electro-thermic apparatus from heading 85.09 do not apply.

10. The Secretariat also considers that the two examples given by the **Israeli** Customs Administration (i.e., a radio receiver-amplifier and a fan heater) are irrelevant in this case, since one of the functions referred to (amplifier and fan, respectively) is always used in combination with the other one at the same time. Moreover, electric space heating apparatus with built-in fans have the character of more complex machines and are classified in heading 85.16 by application of GIR 1 (i.e., application of the heading text). The last paragraph of part (B) of the Explanatory Note to heading 84.14, on page 1423, says the same. Finally, the machine at issue should be classified according to its characteristics and not by comparing it with other machines.
11. If the Committee shares the view of the Secretariat to classify the machine at issue outside heading 85.16, the question of the scope of subheading 8516.60 on the one hand and that of subheadings 8516.71 and 8516.79 on the other hand, is no longer relevant in the context of the classification of the machines at issue. However, it might consider it appropriate for clarification purposes to discuss this point; and certainly if the Committee considers that the machine at issue should be classified in heading 85.16. In its reply to the **Israeli** Customs Administration, the Secretariat concluded that the term “oven” as used in subheading 8516.60 does not cover heating apparatus of the type used in the machine at issue. Items (15) and (17) of the first paragraph of part (E) of the Explanatory Note to heading 85.16, on page 1649, are of a similar construction and are classifiable in subheading 8516.79.

III. CONCLUSIONS

12. The Committee is invited to rule on the classification of the machine described in paragraph 4 above and to express its view on the scope of subheading 8516.60 on the one hand and that of subheadings 8516.71 and 8516.79 on the other hand, taking into account the observations put forward by the **Israeli** Customs Administration as reproduced in Annex II to this document, and the observations of the Secretariat in Annex I to this document and in paragraphs 5 to 11 above.

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Letter of 26 September 2002 from the Secretariat

This is with reference to your request of 11 September, seeking the WCO Secretariat's view on the classification of a certain commodity in the Harmonized System.

Product description

Based on the information and the literature provided with the request, it concerns an electric household type machine for baking bread (dimensions : (l x w x h) approximately 36 cm x 22 cm x 27 cm; weight : approximately 5.9 kg) ("Chromex® Prestige"). It consists of a housing comprising a removable container ("bread pan") in which the ingredients for bread dough can be mixed and baked. The bread pan has a rotating shaft for the removable kneading blade, which is connected to an electric motor once it is placed inside the machine. Electric heaters surrounding the container area are used to bake the bread. The machine has automatic programmes (which can be operated from a control panel on top of the machine) for kneading and baking and for kneading only. In the latter case, the prepared dough can be taken out in order to be baked in another appliance.

Classification

In the view of the Secretariat, headings 85.09 and 85.16 merit consideration. Headings 84.19 and 84.38 should be ruled out, since from the dimensions of the apparatus at issue, as well as from the information given in the instruction manual, it must be concluded that the apparatus at issue is of a kind for domestic purposes. In this context it is to be noted that heading 84.19 does not cover machines, etc., of a kind used for domestic purposes, whereas heading 84.38 covers machinery, not specified or included elsewhere in Chapter 84, for the industrial preparation or manufacture of food or drink (emphasis added).

Heading 85.09 covers electro-mechanical domestic appliances, with self-contained electric motor. Food grinders and mixers are, irrespective of their weight, classifiable in this heading, if they are of the kind commonly used for domestic purposes (see the introductory paragraph of Note 3 to Chapter 85 and sub-paragraph (a) of that Note).

Heading 85.16 covers, among others, electro-thermic appliances of a kind used for domestic purposes.

The apparatus at issue is in fact a composite machine consisting of two machines fitted together to form a whole for the purpose of performing two complementary functions (i.e., mixing the dough and baking the bread). Such a composite machine is to be classified as if consisting only of that component which performs the principal function, by virtue of the provisions of Note 3 to Section XVI. Given the fact that the machine can also be used solely as a kneading machine, the Secretariat considers that this function is the principal function. That being the case, the machine is to be classified as a food mixing machine of heading 85.09 (more precisely subheading 8509.40).

Although no longer relevant because of the above-suggested classification, I am of the opinion that the term "oven" as used in subheading 8516.60 does not cover heating apparatus of the type used in the machine at issue. Items (15) and (17) of the first paragraph of part (E) of the Explanatory Note to heading 85.16, on page 1649, are of a similar construction and are classifiable in subheading 8516.79.

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In conclusion, the Secretariat suggests classifying the bread making machine described above in heading 85.09, subheading 8509.40, by application of GIRs 1 (application of Note 3 to Section XVI and the text of heading 85.09) and 6.

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Letter of 18 November 2002 from the Israeli Customs Administration

Thank you for your letter of the 26 September 2002 concerning the classification of an automatic bread making machine, in which you suggest classification in heading 85.09.

We would like you to reconsider with due consideration of the following points.

As you state in your letter, the apparatus is a composite machine, consisting of two machines performing two complementary functions, mixing the dough and baking the bread, and is therefore to be classified as a machine which performs the principal function, by virtue of the provision of Note 3 to Section XVI, providing it is possible to determine the principal function.

You go on to state that since the machine can be used solely as a kneading machine this is the principal function.

We would suggest that the fact that a composite machine is capable of being used solely for one of its functions does not necessarily make that function the principal one. Examples of composite machines which are not classified in this manner are a hi-fidelity audio receiver-amplifier (classified in heading 85.27 even though the amplifier would always be employed in an audio system) and a fan heater, also designed to be used as a fan for ventilation in the summer (classified in heading 85.16 even though the fan is always employed whether the appliance is used for heating or ventilation).

We are of the opinion that when deciding the principal function of a composite machine, its overall design, purpose and any defining function which differentiates it from other machines must be taken into account.

The design and purpose of the machine under discussion is to make bread. The ingredients of bread only become bread by baking. It is the baking function which defines the machine and which differentiates it from other machines (for example a **Mix Master** which mixes and kneads dough).

In your description of the machine you correctly state that it is a machine for baking bread.

Therefore it is our opinion that the principal function of the machine is the electro-thermic function by which the machine bakes and therefore classification is in heading 85.16. Certainly the function is not less important or significant than any other function that the machine performs, so that, at the very least, classification is in heading 85.16 by the application of GIR 3 (c).

We also bring to your attention Note 3 to Chapter 85 which states that heading 85.09 does not apply to electro-thermic appliances.

In conclusion, we urge you to consider the aforementioned arguments and to agree to the classification of the bread-making machine in heading 85.16, specifically 8516.79.