



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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(+ Annexes I to VI)

O. Eng.

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CLASSIFICATION OF "SKATE FINS" (OF THE GENUS *RAJA*)

(Item IX.2 on Agenda)

I. BACKGROUND

1. On 11 October 2001, the Secretariat received an enquiry from the Customs Administration of **Argentina** concerning the classification of a product referred to as "skate fins" (of the genus *Raja*). According to the information submitted, the product at issue was obtained from the left and right sides of a skate's body which took the form of "wings". The product at issue was presented without skin, frozen, including radial cartilage in a meat/cartilage weight ratio of approximately 86%/14%. The issue under dispute was whether the product should be considered to be "fish fillets and other fish meat" of heading 03.04 or classified in heading 03.03 as "fish, frozen, excluding fish fillets and other fish meat of heading 03.04".
2. The **Argentinean** Administration considered that the product at issue, bearing in mind both the processing performed in order to obtain it and its composition, had characteristics which could be likened to those of the products classified in heading 03.04 (subheading 0304.90) as other fish meat. Nevertheless, the **Argentinean** Administration wanted to obtain the Secretariat's opinion on the matter.

In its letter dated 6 December 2001, the Secretariat informed the **Argentinean** Administration that, from a classification point of view, the cartilage had to be regarded as bones. Accordingly, the Secretariat took the view that skate fins (of the genus "*Raja*"), without skin, frozen, including the radial cartilage should be classified in heading 03.03 (subheading 0303.79).
3. If the **Argentinean** Administration was still of the opinion that the skate fins at issue should be classified in heading 03.04, the Secretariat proposed to the **Argentinean** Administration that the matter be referred to the Harmonized System Committee for examination. The full text of the Secretariat's reply is reproduced in Annex I to this document.

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

File No. 2960

4. On 28 October 2002, the Secretariat received the following note (with illustrations – see Annexes II to VI) from the **Argentinean** Administration agreeing that the question be submitted to the Committee for examination :

II. NOTE FROM THE **ARGENTINEAN** ADMINISTRATION

5. “**Argentina's** National Directorate of Taxation wishes to take up a matter raised in your letter of 6 December 2001 concerning the classification of "skate fins".

6. In this connection, I am writing to inform you that **Argentina's** National Institute for Fisheries Research and Development, which is part of what was formerly the Ministry of Finance and Public Services, has prepared a report on this product.

The technical file provides the following details :

- a. Commercially, a piece of fish is regarded as a fish cut only if it includes part of the spinal column, and for that reason skate fins cannot be regarded as fish cuts. They should, however, be regarded as fish meat. It should be noted that the radius of the pectoral fins is connected not to the spinal column, but to the shoulder girdle.
- b. Similarly, it should be noted that the most obvious difference between elasmobranchii (the genus to which rays belong) and teleostii is the absence of bones in the former. In elasmobranchii the skeleton is formed by pure cartilage, which is a resistant material composed of protein and complex carbohydrates, hardened by fibres shaped like rods.
- c. It is clear from the foregoing that a skate fin is a commercial cut which, as a result of its composition and consistency, is intended to be eaten in its entirety, and for this reason it should be regarded as fish meat.
7. The Explanatory Note to heading 03.04 refers, in items (1) and (2), to products from which the bones (including in particular the spinal column or backbone) have been removed.
8. At the same time, the Explanatory Note to heading 03.03 refers to products (including fish cuts) which still contain bones.
9. Thus, taking into account the point raised by the National Institute for Fisheries Research and Development under item 7 above, and bearing in mind the criterion arising out of the above-mentioned Explanatory Notes to heading 03.04 and the commercial interpretation explained earlier, the product concerned cannot be regarded as a fish cut.
10. Moreover, with reference to the comment made by the Director of Tariff and Trade Affairs in his letter of 6 December 2001, to the effect that skate fins - like the other fish of heading 03.03 - must be filleted for consumption, it should be noted that as pointed out by the National Institute for Fisheries Research and Development, the skate fin is a commercial cut which, as a result of its composition and consistency, is intended to be eaten in its entirety - in other words, it is perfectly suitable for consumption in the form in which it is presented. In fact, it can also be said that some of the other fish of heading 03.03 do not necessarily need to be filleted before they can be eaten.

11. Consequently, in the light of the points made above, **Argentina's** National Directorate of Taxation maintains that "skate fins" can be classified in heading 03.04, and requests that this question be placed before the Harmonized System Committee."

III. SECRETARIAT COMMENTS

12. In its latest note the **Argentinean** Administration argues that the skate fins in question are intended to be eaten in their entirety. However, based on information taken from the Internet, this is not normally the case. The meat of the fins (or more often referred to as the "wings"), the only edible parts, has a striated, open-fan configuration. Because of the wing structure, skate has a stringy texture. Each wing produces two filets – one from the upper side and one from the lower. Even though cooking softens the cartilage, the Secretariat believes that the meat is normally removed from the cartilage after it is cooked, and before consumption. The **Argentinean** Delegation is invited to clarify this issue.
13. In any case, at the time of importation (or exportation) the skate wings at issue are presented with their cartilage, as illustrated in Annexes II to VI to this document.
14. Heading 03.04 covers "fish filets and other fish meat (whether or not minced), fresh chilled or frozen", whereas heading 03.03 covers "fish, frozen excluding fish filets and other fish meat of heading 03.04". The relevant parts of the Explanatory Note to heading 03.04 read as follows :

"This heading covers :

(1) **Fish fillets.**

For the purposes of this heading the term **fish fillets** means the strips of meat cut parallel to the backbone of the fish and constituting the right or left side of a fish insofar as the head, guts, fins (dorsal, anal, caudal, ventral, pectoral) and bones (spinal column or main backbone, ventral or costal bones, branchial bone or stapes, etc.) have been removed and the two sides are not joined together, for example by the back or belly.

The classification of these products is not affected by the possible presence of the skin, sometimes left attached to the fillet to hold it together or to facilitate subsequent slicing. Classification is similarly unaffected by the presence of pin bones or other minor bones which may not have been completely removed.

Fillets cut in pieces are also classified as fillets in this heading.

Cooked fillets, and fillets merely covered with batter or bread crumbs, whether or not frozen, are classified in **heading 16.04**.

- (2) **Other fish meat** (whether or not minced), i.e., fish meat from which the bones have been removed. As in the case of fish fillets, classification of fish meat is unaffected by the presence of minor bones which may not have been completely removed."

15. As pointed out by the Secretariat in its classification advice to the **Argentinean** Administration (see Annex I), it appears, according to the Explanatory Note referred to above (and according to the Explanatory Note to heading 03.02 which applies, mutatis mutandis, to

the products of heading 03.03), that the normal demarcation line between these two headings, as to the classification of fish meat, is whether such fish meat contains bones or not.

16. Skates are flat-bodied, cartilaginous fishes constituting the suborder *Rajoidea* of the order *Batoidei* (skates, rays, and others) (*Britannica*). According to The Concise Oxford Dictionary (10th Edition), cartilaginous fish is a “fish of large class distinguished by having a skeleton of cartilage rather than bone and including the sharks, rays, and chimareas”.
17. The skate fins at issue contain 14 % radial cartilage, but no bones as such. It could therefore be argued that these fins should be classified in heading 03.04 (subheading 0304.90) as “fish meat”. However, since the legal texts contain no references to “bones”, the Secretariat has taken the view, from a classification point of view, that fish meat containing cartilage should be classified in a manner similar to fish meat containing bones. If not, e.g., edible shark heads (containing fish meat and cartilage) could also be classified in heading 03.04. The Secretariat is therefore still of the opinion that skate fins (of the genus *Raja*), without skin, frozen, including the radial cartilage should be classified in heading 03.03 (subheading 0303.79).

IV. CONCLUSION

18. The Committee is invited to :
 - (1) examine the classification of “skate fins” (of the genus *Raja*); and
 - (2) express its views as to what further action should be taken to clarify the distinction between “fish fillets and other fish meat” of heading 03.04 and “fish, frozen, excluding fish fillets and other fish meat of heading 03.04” (heading 03.03).

Skate fins (or skate wings) (of the genus *Raja*), obtained from the left and right sides of a skate’s body in the form of “wings”. These fins (or wings) are presented without skin, frozen, including radial cartilage in a meat/cartilage weight ratio of approximately 86%/14%.

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SECRETARIAT REPLY TO THE ARGENTINEAN ADMINISTRATION

“Thank you for your above referenced letter concerning the classification of a product referred to as “skate fins” (of the Genus *Raja*).

Description

According to your administration, the goods at issue can be described as follows : “skate fins (Genus “*Raja*”), without skin, frozen, including radial cartilage in a meat/cartilage weight ratio of approximately 86%/14%.”

Furthermore, in accordance with the information provided by your administration, this product is obtained from the left and right sides of the skate’s body, which take the form of “wings” which the fish uses to propel itself through the water. Essentially the wings, presented without skin, consist of muscle and interconnective tissue (cartilage). In the industrial process used to obtain the wings, the fish is sliced alongside the spinal column, generally parallel to the plane of symmetry of the fish and at a sufficient distance from the spinal column to ensure that the head, the abdominal cavity and the guts remain attached to it. The product is obtained by a method, and with a yield, similar to those associated with cutting fillets from fish of a more familiar shape, such as the cod.

Classification

Your administration considers that the product at issue, bearing in mind both the processing performed in order to obtain it and its composition, has characteristics which can be likened to those of the products classified in heading 03.04 (subheading 0304.90) as other fish meat. Nevertheless, your administration would like to obtain the Secretariat’s opinion on this matter.

The Secretariat agrees that heading 03.04 (“Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen”) merits consideration, in addition to heading 03.03 (“Fish, frozen, excluding fish fillets and other fish meat of heading 03.04”).

In addition to whole fish, heading 03.03 covers fish which is headless, gutted, or in cuts containing bones (see the Explanatory Note to heading 03.02 which applies, mutatis mutandis, to the products of heading 03.03).

On the other hand, heading 03.04 includes fish meat from which the bones have been removed (unaffected by the presence of minor bones which may not have been completely removed) (see the Explanatory Note to that heading).

The question to be answered is therefore whether the skate fins at issue should be regarded as cuts containing bones of heading 03.03, or as fish meat from which the bones have been removed of heading 03.04.

Skates are flat-bodied, cartilaginous fishes constituting the suborder Rajoidea of the order Batoidei (skates, rays, and others) (Britannica). According to The Concise Oxford Dictionary (10th Edition), cartilaginous fish is a “fish of large class distinguished by having a skeleton of cartilage rather than bone and including the sharks, rays, and chimareas”.

Strictly speaking, as pointed out by your administration, this means that skates do not contain bones, but instead a gelatinous cartilage. On the other hand, the skate fins at issue have to be filleted before consumption in a similar way as other fish of heading 03.03.

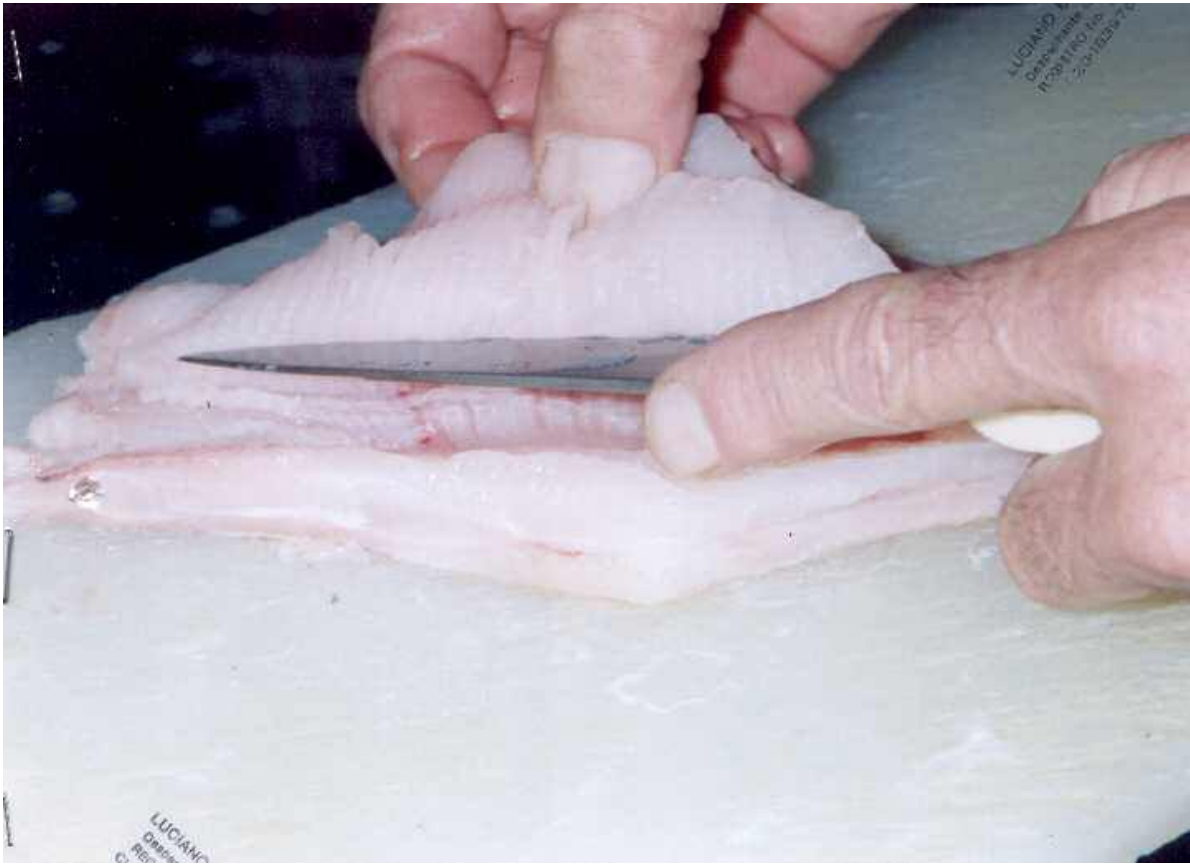
Whole fish (including skates and other cartilaginous fishes), frozen (whether or not gutted or headed) would in the Secretariat's view be classified in heading 03.03 – see the Explanatory Note to heading 03.02. Classifying cuts of cartilaginous fishes, e.g., skate fins (with the cartilage), in another heading would in our mind seem very odd.

From a classification point of view, the Secretariat therefore believes that cartilage has to be regarded as bones. Accordingly, the Secretariat takes the view that skate fins (Genus "*Raja*"), without skin, frozen, including the radial cartilage should be classified in heading 03.03 (subheading 0303.79).

However, if your administration is still of the opinion that the skate fins at issue should be classified in heading 03.04, the Secretariat believes that this question should be submitted to the HS Committee for consideration. The Secretariat would be pleased to put forward a proposal from your administration in this respect."

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Photo 1 – Showing the start of the cutting process into a skinless skate fin in order to remove a wing.



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Photo 2 – Showing the cut made into a skinless skate fin in order to remove a wing.



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Photo 3 – Showing the cut made into a skinless skate fin. It is been separated into two sides : one side is rosy in colour and the other reveals the presence of interconnective tissue (cartilage) which is slightly lighter.



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Photo 4 - Showing the cut side containing interconnective tissue (cartilage). The photo has been lit from behind to show the cartilage. The shoulder girdle and radial cartilage can just be seen (top and bottom of the photo respectively)



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Photo 5 - Showing the cut side containing interconnective tissue (cartilage). The photo has been lit from behind to show the cartilage. The shoulder girdle and radial cartilage can just be seen (top and bottom of the photo respectively) - same as photo 4 but lower view.

