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ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM  
COMMITTEE

NC0754E1

-  
32<sup>nd</sup> Session

O. Eng.

Brussels, 3 October 2003.

CLASSIFICATION OF CONCENTRATED MILK WITH ADDED SUGAR

(RESERVATION BY THE CAMEROON ADMINISTRATION)

(Item VI.1 on Agenda)

Reference documents :

NC0400E1 (HSC/27)  
NC0430E2, Annex IJ/2 (HSC/27 - Report)  
NC0510E2, para. 7 (HSC/28 - Report)  
NC0541E1 (HSC/29)  
NC0583E1 (HSC/30)

NC0590E2, Annex H/2 (HSC/29 – Report)  
NC0655E2, para. 37 and 38 (HSC/30 – Report)  
NC0691E1 (HSC/31)  
NC0730E2, Annex H/4 (HSC/31 – Report)

I. BACKGROUND

1. At its 29<sup>th</sup> Session (May 2002), the HS Committee re-examined the classification of concentrated milk with added sugar. This Agenda item stemmed from a classification dispute between the EC and Cameroon which, in accordance with Article 10 of the HS Convention, had been referred to the HS Committee.
2. The Committee decided, by 31 votes to 12 to classify the product at issue (“Bonnet Bleu”) in heading 04.02 (subheading 0402.99) by application of GIRs 1 and 6.
3. By its letter of 10 July 2002, the Cameroon Administration 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.
4. The Council, at its 101<sup>st</sup>/102<sup>nd</sup> Sessions in June 2003, considered the Cameroon reservation and it decided to refer the question of the classification of concentrated milk with added sugar back to the Committee for re-examination.

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5. On 17 September 2003, the Secretariat received the following Note from the **Cameroon** Administration putting forward arguments in support of the reservation it had entered in respect of the decision of the Harmonized System Committee (29<sup>th</sup> Session) concerning the classification at issue.

## II. NOTE FROM THE **CAMEROON** ADMINISTRATION

6. "I wish to recall **Cameroon**'s position concerning the HS classification of the product known as "**Bonnet Bleu**".
7. At the HSC's 29<sup>th</sup> Session, in the light of the results obtained by laboratories other than those of the countries involved in the dispute, it was universally agreed that the product in question contained only animal fat. **Cameroon** therefore acknowledged that the product should no longer be classified in heading 19.01 but could not accept its classification in heading 04.02.
8. My administration reminded the Committee that, in accordance with Classification Opinion 2106.90/21, it had classified a similar product in heading 21.06 and requested that "**Bonnet Bleu**" also be classified in that heading.
9. After lengthy discussion, the Committee decided to classify the product in question in heading 04.02.
10. On 10 July 2002, the **Cameroon** Customs Administration entered a reservation against that decision.
11. At the 31<sup>st</sup> Session, the Secretariat submitted the results of a study to verify the existence of a possible conflict between Classification Opinion 2106.90/21 and the classification of "**Bonnet Bleu**" as mentioned in Annex R to Doc. NC0590B2 (HSC/29/May 2002). In its Doc. NC0691E (April 2003), para. 31, the Secretariat was "of the opinion that there may be a conflict between the potential classification of "**Bonnet Bleu**" in heading 04.02 and the classification of SMD in heading 21.06, in view of the fact that the Committee on one hand has classified a milk/sugar product containing 69% sugar in heading 21.06, and on the other hand the Committee has classified a milk/sugar product containing 68.7% sugar (dry matter) in heading 04.02."
12. As the Committee prepares to re-examine the classification of "**Bonnet Bleu**", **Cameroon** would like to draw attention to the following points :
- there is no substantial difference between "**Bonnet Bleu**" (68.7% sugar and 22.3% milk - dry extract) and the product SMD (69% sugar, 29% milk and 2% dextrin);
  - the classification of SMD in heading 21.06 was decided not on the basis of the presence of dextrin but on the basis of its high sugar content;
  - the product which the Committee classified in heading 21.06 contains more milk (29%) than "**Bonnet Bleu**" (22.3%), which is still below the minimum content specified in Standard No. A-4 (1971) of the Codex Alimentarius for sweetened condensed milk;

- the **Cameroon** Administration and the domestic industry are still unable to understand the reasons which led the HSC to classify a preparation containing more than 60% sugar in Chapter 4 in defiance of the so-called “essential character” principle. Is it not a sugar rather than a milk preparation ? Do not the existing texts favour this interpretation ? Might this not lead to situations in which the HS is not being uniformly applied ?
- if the Committee wants to be fair and logical and remain a technical reference body, Classification Opinion 2106.90/21 should serve as a precedent for classifying the similar product “**Bonnet Bleu**” in heading 21.06;
- the decision on where to classify this product is one of great importance for the developing countries. This is why, in May 2003, **Cameroon** sent you proposals for submission to the RSC with a view to excluding from Chapter 4 products with added matter containing less than 30% milk or non-animal fat or more than 50% sugar by dry weight (Chapter 19 or 21) and restore to this staple the label and name of “milk”.

13. In fact, the General Explanatory Note to the corresponding Chapter is not very informative and it would therefore be desirable for the legal texts to fix a limit for sugar and milk in the products of Chapter 4 to prevent abuse.”

### III. NOTE FROM THE EC

14. On 8 September 2003, the Secretariat had already received a Note from the **EC** with regard to this issue. The note reads as follows :

15. “At its 29<sup>th</sup> Session (May 2002), the Harmonized System Committee decided to classify the product “**Bonnet Bleu**” in heading 04.02 (subheading 0402.99), by application of GIRs 1 and 6.

16. In this regard **Cameroon** drew the Committee’s attention to the fact that the HS Committee had already classified a sugar/milk/dextrin preparation (SMD) (containing 69% sugar, 29% milk powder and 2% dextrin) in heading 21.06 (Classification Opinion 2106.90/21). In the opinion of **Cameroon** there is contradiction between the classification of “**Bonnet Bleu**” in heading 04.02 and the classification of SMD in heading 21.06. **Cameroon** has pointed out that, calculated on the dry matter, “**Bonnet Bleu**” contains 68.7% sucrose, thus making this product almost identical to the product referred to in the Classification Opinion.

17. The **EC** has always considered that the products “**Bonnet Bleu**” and SMD are not similar and divergent classification of these products can be justified by their dissimilarities. “**Bonnet Bleu**” and the product referred to in Classification Opinion 2106.90/21 are two different products. SMD is a dry solid food preparation containing, by weight, 69% sugar, 29% milk powder and 2% dextrin whereas “**Bonnet Bleu**” is a liquid product containing, by weight, 51.1 % concentrated milk, 48.7% sugar and, equally important, it does not contain dextrin. “**Bonnet Bleu**” is clearly different from the other product.

18. At its 31<sup>st</sup> Session (May 2003), the Committee examined the possible conflict between the classification of “**Bonnet Bleu**” and Classification Opinion 2106.90/21 for a sugar/milk/dextrin preparation (SMD) which the Committee had classified in heading 21.06 at its 22<sup>nd</sup> Session. After an exchange of views, it was concluded that some information was

missing, and made it difficult to make a complete comparison between the two products at issue.

### CLASSIFICATION

19. The text of heading 04.02 reads "Milk and cream, concentrated or containing added sugar or other sweetening matter". In this respect the expression 'milk' means full cream milk or partially or completely skimmed milk (Note 1 to Chapter 4).
20. Based on the results of the laboratory analyses from four administrations (Japan, Mexico, Norway and the United States), it is clear that "Bonnet Bleu" does not contain fat other than animal fat. "Bonnet Bleu" consists of no other substances than sucrose and concentrated milk (conclusion in the analysis report of the Japanese Administration).
21. The product "Bonnet Bleu" is produced from whole milk and sugar and consists of concentrated milk (51.1%) and sucrose (48.7%) and a stabiliser (<0.2%).

### CONCLUSION

22. "Bonnet Bleu" consists of no other substances than sucrose and concentrated milk, the product corresponds to the legal text of heading 04.02 (GIR 1). At present there is no legal provision in respect of the amount of added sugar to products of heading 04.02. Nevertheless, classification under present heading 04.02 is well enough justified by the fact that the amount of sucrose (48.7%) is in minority to the amount of concentrated milk (51.1%).

### SMD (sugar/milk/dextrin) preparation

23. The classification of "Bonnet Bleu" under heading 04.02 has led to confusion by a number of delegates in the Committee. This confusion stems from the classification by the Committee of a dry solid food preparation (SMD) containing, by weight, 69% sugar, 29% milk powder and 2% dextrin under heading 21.06. In this respect it was pointed out that, calculated on the dry matter, the product "Bonnet Bleu" contained 68.7% sucrose, thus making this product almost identical to the product referred to in the Classification Opinion. However "Bonnet Bleu" and SMD are not similar and divergent classification of these products can be justified.
24. Firstly, the presentation of the concentrated milk component as : fat (7%), milk solids-non-fat (15.1%) and water (29.0%), is misleading. In the product "Bonnet Bleu" the water forms one of the constituents of the concentrated milk. For this reason it is not correct to present the concentrated milk as separate constituents : "water", "milk solids-non-fat" and "milk fat". After all the same could be done for milk, which only consists of 12% solids. In the presentation of the composition of "Bonnet Bleu" the component 'concentrated milk' should be presented 'as such'.
25. Secondly, unlike SMD which is a dry solid food preparation consisting of 69% sugar, 29% milk powder and 2% dextrin, the liquid product "Bonnet Bleu" consists of no other substances than sugar and concentrated milk. It is stated in the Explanatory Note to heading 04.02 that small quantities of starch may be added to powdered milk (not exceeding 5%). The addition of 2% dextrin - a starch degradation product - however would preclude the classification of the SMD preparation in heading 04.02. On the other hand the product "Bonnet Bleu" corresponds to the legal text of heading 04.02.

26. Thirdly, in comparison with “Bonnet Bleu” the sugar content in SMD - in proportion to the milk product - is much higher. In “Bonnet Bleu” the amount of sucrose (48.7%) is in minority to the amount of the milk component, the concentrated milk (51.1%). In SMD the amount of sugar (69%) is more than twice as high as the amount of the milk component (29%). For this reason the HS Committee considered SMD to be a preparation of sugar to which milk powder and dextrin were added.
27. It is clear from the foregoing that the two products “Bonnet Bleu” and SMD are different. The dissimilarities between the two products justify the divergent classification. There are no legal arguments or obstacles that prevent the classification of “Bonnet Bleu” under heading 04.02, whereas the composition of the dry solid food preparation SMD is clearly of a different nature and excludes this product from heading 04.02.

#### Sweetened Condensed Milk

28. Beyond doubt heading 04.02 includes products known as “sweetened condensed milk”. To put it briefly, sweetened condensed milk is basically concentrated milk to which sugar has been added. The high sugar concentration in sweetened condensed milk destroys the majority of micro-organism. It can be made either from whole milk or skim milk. Normally it contains 8% milk fat, 45% sugar, 20% milk solids-non-fat and 28% moisture and is packed in tins or in barrels for industrial use.
29. The Codex Alimentarius Commission has drawn up a food standard for sweetened condensed milks (CODEX STAN A-4-1971, Rev.1-1999). This Standard applies to sweetened condensed milks, intended for direct consumption or further processing. (<http://www.codexalimentarius.net>).
30. The CODEX food standard for sweetened condensed milks gives the following description :
- “Sweetened condensed milks are milk products which can be obtained by the partial removal of water from milk with the addition of sugar, or by any other process which leads to a product of the same composition and characteristics. The fat and/or protein content of the milk may have been adjusted, only to comply with the compositional requirements in Section 3 to this Standard, by the addition and/or withdrawal of milk constituents in such a way as not to alter the whey protein casein ratio of the milk being adjusted.”
31. The Codex distinguishes the following four types :

<i>Sweetened condensed milk</i>	
Minimum milk fat	8 %
Minimum milk solids*	28 %
Minimum milk protein in milk solids-not-fat*	34 %
<i>Sweetened condensed skimmed milk</i>	
Maximum milk fat	1 %
Minimum milk solids*	24 %
Minimum milk protein in milk solids-not-fat*	34 %

*Sweetened condensed partly skimmed milk*

Milk fat	More than 1 % and less than 8 %
Minimum milk solids-not-fat*	20 %
Minimum milk solids*	24 %
Minimum milk protein in milk solids-not-fat*	34 %

*Sweetened condensed high-fat milk*

Minimum milk fat	16 %
Minimum milk solids-not-fat*	14 %
Minimum milk protein in milk solids-not-fat*	34 %

\* The milk solids-non-fat contents include water of crystallisation of the lactose.

32. For all sweetened condensed milks the amount of sugar is restricted by Good Manufacturing Practice to a minimum value which safeguards the keeping quality of the product and a maximum value above which crystallisation of sugar, may occur.

33. The product “**Bonnet Bleu**” is similar to ‘sweetened condensed milk’, it contains 7% milk fat, 15,1% milk solids-non-fat and 29% moisture and <0,2% stabilizer. For reason that its composition does not exactly match one of the aforementioned compositions in the food standard of the Codex Alimentarius the product “**Bonnet Bleu**” can not be labelled and marketed under the name ‘sweetened condensed milk’.

34. The following table shows a comparison between the composition of the product “**Bonnet Bleu**” (BB) and ‘sweetened condensed milk’ (SCM) :

	BB	(dry matter)	SCM	(dry matter)
Sucrose	48.7 %	68.7 %	45 %	61.6 %
Water	29 %		27 %	
Milk solids-non-fat	15.1 %	21.3 %	20 %	27.4 %
Fat	7 %	9.7 %	8 %	11 %
Stabiliser	<0.2 %		<0.2 %	

35. The difference in sugar content is only some 7%. This must however be referred to the method of preservation of this kind of products, i.e., by addition of sugar (sucrose) which decreases the water activity to the level needed for preservation. The calculation of this is performed by dividing the sugar % by the sum of the sugar % and the water %. For ‘sweetened condensed milk’ this means  $45 / (45 + 27) = 0.625$ , whereas the calculation for “**Bonnet Bleu**” leads to  $48.7 / (48.7 + 29) = 0.626$ , which can be taken as the same value. The underlying reason for the somewhat higher water content and related higher sugar content in “**Bonnet Bleu**” is that it is obtained from milk with a fat content of 4% (milk solids-non-fat 8.7%) by a 3.4 – fold concentration, whereas the ‘sweetened condensed milk’

originated from a milk with fat content of 3.5 % (milk solids-non-fat 8.7) by a 4.2 – fold concentration.

36. If the composition of standard ‘sweetened condensed milk’ would be taken as separate constituents : sugar, milk solids-non-fat, milk fat and water, then, calculated on the dry matter, ‘sweetened condensed milk’ contains 61.6% sugar. Not allowing such products to be classified in heading 04.02 would entail the transfer of many products from this heading.

#### FINALLY

37. “Bonnet Bleu” consists of no other substances than sucrose and concentrated milk and has been correctly classified in heading 04.02 (subheading 0402.99), by application of GIRs 1 and 6. The amount of sucrose (48.7%) is in minority to the amount of concentrated milk (51.1%). There are no legal provisions in respect of the amount of added sugar in products of heading 04.02 that prevent classification of “Bonnet Bleu” in heading 04.02.
38. The product “Bonnet Bleu” and the sugar/milk/dextrin preparation (SMD) of Classification Opinion 2106.90/21 are not similar and divergent classification of these products can be justified by their dissimilarities.
39. SMD is a dry solid food preparation consisting of 69% sugar, 29% milk powder and 2% dextrin, whereas the liquid product “Bonnet Bleu” consists of no other substances than sugar and concentrated milk.
40. In comparison with “Bonnet Bleu” the sugar content in SMD - in proportion to the milk product - is much higher. In “Bonnet Bleu” the amount of sucrose is in minority to the amount of the concentrated milk component. In SMD the amount of sugar is more than twice as high as the amount of the milk powder.”

#### IV. ARGUMENTS PUT FORWARD AT EARLIER SESSIONS

41. When the HS Committee first examined the classification of concentrated milk with added sugar at its 27<sup>th</sup> Session (May 2001), it was agreed that the reason for this classification dispute was most likely the result of two contradictory laboratory analyses which had been carried out in the exporting and the importing countries with regard to the origin of the fat in the product at issue.
42. The Committee therefore agreed to send samples of the product at issue to Customs laboratories in other parts of the world for analysis in order to find out the exact composition of the product, particularly with regard to the origin of the fat.
43. At its 29<sup>th</sup> Session (May 2002), the Committee unanimously agreed that, based on the results of the laboratory analyses from four administrations, the product being discussed (“Bonnet Bleu”) did not contain fat other than animal fat. Consequently, it decided not to consider classification in heading 19.01. Following this consensus, there were however still two opposing views in the Committee with regard to the classification of the product at issue, i.e., headings 04.02 and 21.06.
44. The Delegate of Cameroon could not agree to classify this product in heading 04.02. He drew the Committee’s attention to the fact that the HS Committee had already classified a similar product (containing 69% sugar, 29% milk powder and 2% dextrin) in heading 21.06

because of its high sugar content. In his opinion, the Committee should abide by its previous decision and also classify "Bonnet Bleu" in heading 21.06. Several delegates supported this view.

45. The EC Delegate argued that "Bonnet Bleu" and the product referred to in Classification Opinion 2106.90/21 were two different products. Since "Bonnet Bleu" was a liquid product containing 48.7 % sugar and, equally important, since it did not contain dextrin, "Bonnet Bleu" was clearly different from the other product. In his mind, the product at issue had not lost the essential character of "milk ... containing added sugar" of heading 04.02. Many delegates supported this view
46. After further discussion, the Committee decided, by 31 votes to 12, to classify the product at issue ("Bonnet Bleu") in heading 04.02 (subheading 0402.99), by application of GIRs 1 and 6. In July 2002, the Cameroon Administration entered a reservation against this decision – see paragraphs 3 and 4 above.
47. At the 30<sup>th</sup> Session of the HS Committee (November 2002), one delegate requested that the Secretariat go ahead with the study on the possible conflict between the classification of "Bonnet Bleu" and Classification Opinion 2106.90/21, as referred to in Annex R to Doc. NC0590B2 (HSC/29/May 2002). He added that, in his view, the fact that Cameroon had entered a reservation should not prevent the conduct of this study, which might in fact facilitate the re-examination of the question in November 2003.
48. The Secretariat indicated that it saw no reason not to conduct this study if the Committee wished it to do so. The Committee therefore instructed the Secretariat to proceed with the study, which would be presented to it for examination at its next session.
49. At the 31<sup>st</sup> Session of the HS Committee (May 2003), one delegate stressed that because a reservation had been entered against the decision by the Committee to classify "Bonnet Bleu" in heading 04.02, legally there was no decision on "Bonnet Bleu". Consequently, the Committee must be careful in its discussions not to prejudice future consideration of the product.
50. The EC Delegate expressed the hope that the Secretariat's study of the possible conflict between the two classifications at issue would facilitate the Committee's re-examination of the "Bonnet Bleu" question in November. He recognised that the sugar/milk/dextrin (SMD) preparation which the Committee had classified in heading 21.06 at its 22<sup>nd</sup> Session, contained a very high proportion of sugar (69%). He noted, however, that since there was no limitation in the legal texts to Chapter 4 as to sugar content, this product could also have been classified in heading 04.02. It was therefore very important to study the dissimilarities between SMD and "Bonnet Bleu" to see why the Committee had classified one product in heading 21.06 and had considered classification of the other in heading 04.02.
51. He admitted that based only on the Report of the Committee's 22<sup>nd</sup> Session it was difficult to see whether the Committee had classified SMD in heading 21.06 because of its elevated sugar content or because of the presence of 2% dextrin in the product. However, based on his recollection of the discussion in the Committee at that session, and taking into consideration the arguments in the working document concerning the classification of SMD (Doc. 42.458), he was of the opinion that the Committee had classified SMD in heading 21.06 because of its dextrin content.



52. He also pointed out that the Secretariat's assumption that SMD contained no fat was incorrect. The comparison between the two products at issue in paragraph 22 of the working document was therefore misleading. However, since the fat in the product was obviously of animal origin, the SMD's fat content had not been taken into consideration by the Committee at its 22<sup>nd</sup> Session. As to the Secretariat's question whether the sugar content of products of heading 04.02 should be calculated in the product as presented, or on the dry matter, the EC was of the view that the sugar content should be calculated based on the product as presented to Customs. Finally, he concluded that there was no conflict between the possible classification of "Bonnet Bleu" in heading 04.02 and the classification of SMD in heading 21.06. After all, "Bonnet Bleu" contained the same ingredients as milk.
53. Another delegate also pointed out that important information was missing as to the fat content in SMD, and whether this fat was of vegetable or animal origin. Nevertheless, he was also of the opinion that there was no conflict between classifying SMD in heading 21.06 and the possible classification of "Bonnet Bleu" in heading 04.02.
54. The Delegate of Cameroon pointed out that it was difficult to classify products based on information other than the information she could glean from the working document. According to her understanding of that document, SMD was classified in heading 21.06 because of its elevated sugar content, and not because of the presence of 2% dextrin in the product. Furthermore, according to the General Explanatory Note to Chapter 4, which in her mind was not exhaustive, dextrin could be regarded as a small quantity of another permissible additive of Chapter 4. She was therefore of the opinion that there was indeed a clear contradiction between the classification of SMD in heading 21.06 and the possible classification of "Bonnet Bleu" in heading 04.02.
55. After this exchange of views, it was concluded that although some information (concerning the possible fat content in SMD) was missing, and which had made it difficult to make a complete comparison between the two products at issue, the Committee felt that the Secretariat's study as to a possible conflict had been useful. However, in the working document for the next session the exact composition of the products (paragraph 22 to Doc. NC0691E1) should be clarified and the information as to the fat content in SMD should also be modified.

#### V. SECRETARIAT COMMENTS

56. Based on the Committee's instructions, the Secretariat has again reviewed its file on SMD. However, since this file does not contain any information as to SMD's fat content, or its nature, no additional information can be provided to the Committee on this point. The Secretariat has also asked the New Zealand Administration (which raised this classification question in 1998) whether it was possible to provide such information. Regrettably, the files of the New Zealand Administration did not contain this information. However, as pointed out by the EC Delegate at the Committee's 31<sup>st</sup> Session, since the fat in the product was obviously of animal origin, the SMD's fat content had not been taken into consideration by the Committee at its 22<sup>nd</sup> Session.
57. The Secretariat would agree with the EC that, the presentation of the milk component part as fat (6%), milk solids-non-fat (15.1%) and water (29.0%), in paragraph 22 of Doc. NC0691E1 was misleading. Liquid milk, of course, consists of fat, milk solids-non-fat and water. Thus, taken together, the liquid milk component of "Bonnet Bleu" adds up to 51%

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of the product. In this regard it should also be pointed out that “Bonnet Bleu” contains (according to its label) :

“Milkfat 6.9%. Milksolids non fat 15%. Sugar approx. 49%.  
Ingredients : whole milk, sugar”.

## VI. CONCLUSION

58. The Committee is invited to re-examine the classification of concentrated milk with added sugar (“Bonnet Bleu”) as described in Doc. NC0583E1, taking into account the comments by the Cameroon Administration in paragraphs 6 to 13 above and the comments by the EC in paragraphs 15 to 40 above as well as the arguments put forward at earlier sessions in paragraphs 41 to 55.
59. The Committee is also invited to indicate what further action should be taken with regard to this matter.
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