



WORLD CUSTOMS ORGANIZATION  
ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM  
COMMITTEE

-  
24<sup>th</sup> Session

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POSSIBLE AMENDMENT OF THE NOMENCLATURE AND/OR THE EXPLANATORY  
NOTE TO HEADING 17.04 CONCERNING "DETECTABLE" COCOA CONTENT

(Item VII.14 on Agenda)

Reference documents :

42.035 (HSC/22)	NC0016E1, paragraphs 30 to 34 (HSC/23)
42.750, Annex H/1, (HSC/22 - Report)	NC0018E1 (HSC/23)
42.806 (SSC/14)	NC0039E1 (HSC/23)
42.850, Annex A/14, (SSC/14 - Report)	NC0090E2, Annex H/1, (HSC/23 – Report)

I. BACKGROUND

1. At its 23<sup>rd</sup> Session, the Harmonized System Committee had a preliminary discussion on the possible amendment to the texts of Chapter 17 to introduce a "detectable cocoa limit".
2. One delegate was of the opinion that amending the Explanatory Note to heading 17.04 by inserting a threshold of 0.2 % cocoa (on a totally defatted basis), agreed upon by the Scientific Sub-Committee at its 14<sup>th</sup> Session, would establish the necessary demarcation line between heading 17.04 and heading 18.06.
3. Other delegates, however, were of the opinion that adjusting the Explanatory Notes would not be enough since the wording of heading 17.04 clearly indicated that sugar confectionery containing cocoa was excluded from that heading. In this respect it was stated that inserting a specific limit only in the Explanatory Notes would create a difficult legal situation in view of Note 1 to Chapter 17 for these products which were "sensitive" products and important in world trade.

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4. The Secretariat was, therefore, instructed to issue a new document for the next session. This document should include a study concerning the potential transfer of goods resulting from the possible amendment of the legal texts. Furthermore, in order to study the trade implications, Contracting Parties should get in contact with their industry and report their findings to the Secretariat for inclusion in the new document.
5. So far, we have not received any additional information from administrations concerning their contacts with the industry. However, on 23 June and 17 August 1999, respectively, the Australian Customs Service and the Swiss Administration submitted the following comments concerning possible amendments to the legal texts and to the Explanatory Notes.

## II. COMMENTS FROM THE AUSTRALIAN CUSTOMS ADMINISTRATION

6. "Australia acknowledges that sugar confectionery and cocoa are sensitive products, but in our national tariff, the rates of duty are the same, therefore we have little problem in our domestic market. We see the problem as being, what test can be used to detect cocoa, and how accurate will the test be, not whether cocoa can or cannot be detected in the product.
7. Note 1 (a) to Chapter 17, states that sugar confectionery containing cocoa, is excluded from Chapter 17 and is classified in heading 18.06. Amendments to the Explanatory Notes need to indicate the exact testing method and also contain a statement of "confidence", for example,  
  
"It is difficult to detect small amounts of cocoa in sugar confectionery. The acceptable test method is ..... and that test will show cocoa amounts of less than ..... at ...  
... % confidence. At any lower level of confidence the cocoa content the cocoa content cannot conclusively be said to be present. Such goods are to be regarded as not containing cocoa."- 8. We suggest that the matter be referred to the Scientific Sub-Committee to decide on (a) a suitable method of testing, (b) its statistical accuracy and (c) the appropriate level of confidence."

## III. COMMENTS FROM THE SWISS ADMINISTRATION

9. "Note 1 (a) to Chapter 17 and the text of heading 17.04 clearly stipulate that sugar confectionery containing cocoa is classifiable in Chapter 18. The legal basis does not allow any limitation to this. Consequently the Swiss Administration feels that it is insufficient to mention a limit in the Explanatory Notes.
10. At this stage, the Swiss Administration is unable to express an informed opinion on the transfers arising from a future amendment to the Nomenclature, as these would depend on the limit set.
11. Nor has the Swiss Administration received any specific requests from industrial or trade circles requiring an amendment to the Nomenclature in this respect."

#### IV. SECRETARIAT COMMENTS

12. It seems that the Australian Administration is of the opinion that amendments to the Explanatory Notes would suffice in this respect, while the Swiss Administration is of the view that the legal texts has to be amended. The Brazilian Administration is also of the opinion that only the Explanatory Notes have to be amended and, accordingly, the following Brazilian proposal was distributed during the 23<sup>rd</sup> Session of the Committee :
- “CHAPTER 17. Page 140. Heading 17.04. Exclusions.
- (b) Sugar preparations containing cocoa in quantity upper to 0.2 % by weight calculated on a totally defatted basis (heading 18.06). (For this purpose cocoa butter is not regarded as cocoa).”
13. The Secretariat agrees with the Swiss Administration and is therefore of the opinion that it would be desirable to amend the legal provisions (in particular, Note 1 to Chapter 17) to clarify the classification of sugar confectionery containing very small amounts of cocoa.
14. An option, as mentioned in Doc. 42.035, paragraph 29, could be to fix an upper limit for cocoa content in sugar confectionery of heading 17.04 (similar to the limit for non-alcoholic beverages of heading 22.02 – see note 3 to Chapter 22), the limit being 0.2 %, as agreed upon by the Scientific Sub-Committee at its 14<sup>th</sup> Session. As a starting point for discussion, the Secretariat proposes the following new sentence to be added to Note 1 (a) to Chapter 17 :
- “However, for the purposes of heading 17.04, the expression “not containing cocoa” does not apply to sugar confectionery with a maximum cocoa content of 0.2 % by weight (calculated on a totally defatted basis).”
15. Note 2 to Chapter 18 should probably be amended accordingly, but the Secretariat will await the Committee’s decision concerning a possible amendment to Note 1 (a) to Chapter 17, before studying this matter further.
16. The Explanatory Notes will also have to be amended. In that respect the Secretariat would like to see a reference to the analytical method (HPLC) in the Explanatory Notes to Chapter 17. Furthermore, as mentioned in the General Explanatory Note to Chapter 19, the method for calculating the cocoa content also has to be inserted.
17. The proposed amendments to the legal texts would, of course, entail that sugar confectionery containing less than 0.2 % cocoa be transferred from heading 18.06 to heading 17.04. Whether such products are important in world trade, the Secretariat does not know, but hopefully the Contracting Parties, after having consulted their industry, can elucidate this question.

#### V. CONCLUSION

18. The Committee is invited to exchange its views on this matter. Taking into account the Secretariat’s comments in paragraphs 12 to 17, the Committee is also invited to decide what further action should be taken.
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