



HARMONIZED SYSTEM
COMMITTEE

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O. Eng.

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CLASSIFICATION OF UNCOOKED PIZZA

(Item IX.4 on Agenda)

I. BACKGROUND

1. On 27 September 1999, the Secretariat received a Note from the Customs Administration of Norway requesting that the classification of uncooked pizza ("Bake-Up Pizza") be submitted to the Harmonized System Committee.
2. By letter of 4 October 1999, the Secretariat informed the Norwegian Administration that due to the late arrival of the request and because of the heavy workload in the Secretariat, it was not possible to prepare a working document for the 24th Session of the Committee, and that this classification question, therefore, would be inserted as a "new question" on the Agenda of the 25th Session of the Harmonized System Committee (March 2000).

II. NOTE FROM NORWAY

3. "The Directorate of Customs and Excise hereby requests, in accordance with Rule 10 of The Rules of Procedure of The Harmonized System Committee, that the question of classification of uncooked pizza be placed on the additional list to the agenda of the 24th Session of the Harmonized System Committee.

Background for the request

4. Upon request from the importer, Norwegian Customs Authorities in 1997 issued a binding pre-entry classification decision under heading 19.01 for a certain kind of pizza. The pizza is of a kind described as "Bake-Up Pizza". However, the decision has been questioned, and we request the view of the Harmonized System Committee.

Description of the product

5. The product is a frozen pizza, net weight 580 grams, in a packing for retail sale. It consists of a pizza base on which the topping has been added. The pizza base is *neither cooked nor partially cooked*. A major argument from the importer when marketing the

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product, named "Bake-Up Pizza Bolognese", is that the pizza base is not pre-cooked, the base is rising as a result of the cooking process in the consumer's own oven.

6. Ingredients according to information obtained from the importer (weight in grams per 100 g of the product) : wheat flour (33 g), water (30,8 g), cheese (9,2 g), margarine cheese (4,6 g) white mushrooms (5,2 g), beef (4,7 g), onion (3,2 g), tomato puree (2,8 g), vegetable (olive) oil (1,4 g), yeast (1,1 g), salt (0,9 g), sugar (0,9 g), rising agent (0,5 g), malt extract (0,4 g), partly hydrogenated vegetable oil (0,3 g), modified starch (0,2 g), garlic (0,2 g) and spices (0,1 g).

Classification of the product

7. Classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes (ex. General Interpretative Rule 1). In this case there are two headings for consideration, namely heading 19.01 and heading 19.05. Pizza is not positively mentioned either in the text to heading 19.01 or in the text to heading 19.05. There are no legal Notes which have direct influence on the choice between the two headings in question. It is necessary to identify the intended coverage of the two headings based on the terms of the heading texts and eventually guidelines that can be found in the Explanatory Notes (EN).

Heading 19.01 reads :

"Malt extract; food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included;"

Heading 19.05 reads :

"Bread, pastry, cakes, biscuits and other bakers' wares,"

8. As stated above, classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes (GIR 1). Neither the text of heading 19.01 nor heading 19.05 gives a unique solution. The major question to be put forward might therefore be whether the classification of the product can be decided by stating that it is a food preparation of flour, meal etc., or, if it can be regarded as a bakers' ware. The classification can be determined under GIR 1. If the Committee decides that the classification of the pizza in question may be decided on the basis of GIR 1, the two following paragraphs are redundant.
9. When a heading mentions a commodity this heading should include the same goods even if incomplete or unfinished (GIR 2). Both pre-cooked pizza and uncooked pizza are complete products with regard to ingredients and unfinished with regard to the cooking process. Incomplete and unfinished goods are classified in the same heading as the complete and finished (GIR 2(a)). A possible interpretation is that this means uncooked pizza should be classified under heading 19.05 as both cooked and partially cooked pizza is classified under that heading. It is, however, doubtful that GIR 2 is intended to cover a case like this, but might have been brought into question, for example, for a pizza imported without cheese. According to GIR 2 (b), goods that consist of more than one material should be classified by using GIR 3.

10. The heading which provides the most specific description shall be preferred to headings providing a more general description (GIR 3 (a)). A bakers' ware is a food preparation, but a food preparation does not need to be a bakers' ware. The term food preparation might therefore be regarded as less specific than bakers' ware. However, the main question still remains, namely whether a dough formed into final shape as a pizza base, and with added topping, is to be regarded as a bakers' ware or not. If this main question can be answered, the classification can probably be decided according to GIR 1. The Explanatory Notes provide important guidelines:

The EN to heading 19.01

11. The EN to heading 19.01 states, inter alia, that the heading covers a number of food preparations with a basis of flour or meal, of starch or of malt extract, which derive their essential character from such materials whether or not these ingredients predominate by weight or volume. Further, it states that other substances may have been added to the main ingredients, that the preparations may be in the form of a dough or other solid forms such as discs. Under item (II) (B) (7) at page 147 of the EN it is further stated that heading 19.01 covers ready-mixed doughs, including those put up in mould or formed into final shape, but according to item (e) in the list of exclusions, fully or partially cooked bakers' wares are excluded (heading 19.05).
12. Antithetically interpreted, the foregoing leads to that a bakers' ware that has undergone no cooking should remain classified in heading 19.01, despite that it is formed to its final shape, and other ingredients like ham, mushrooms, etc., are added on top of it.
13. However, taking the latter information into consideration, we have found that the pizza probably cannot fall within subheading 1901.20. The reason is that this product must be regarded as further prepared than a mix or dough, but not further prepared than covered by the heading. The remaining alternative in heading 19.01 should then be subheading 1901.90 - "Other".

The EN to heading 19.05

14. The EN to heading 19.05 states under item (A) that the heading covers all bakers' wares, and pizza is specifically mentioned in item (14). In addition, no requirement is mentioned either in the legal texts or in the EN that the products of heading 19.05 have to be wholly or partially cooked. If GIR 2 is applied, surely classification under heading 19.05 will have to be the correct solution. Based on the arguments put forward, the "Findus Bake-Up Pizza Bolognese" could be considered as a bakers' ware. Considering heading 19.05, subheading 1905.90 would probably be the most appropriate.
15. Norway kindly asks, taking all the above information into consideration, for the Committee's view whether the "Findus Bake-Up Pizza Bolognese" should be classified as a food preparation of flour, meal, etc., of heading 19.01 or if it should be regarded as a bakers' ware of heading 19.05."

III. SECRETARIAT COMMENTS

16. The point at issue is whether this product should be considered as “food preparations of flour, meal, starch or malt extract not elsewhere specified or included” to be classified in heading 19.01, or whether it would be more appropriate to classify the product in heading 19.05 (“bread, pastry, cakes, biscuits and other bakers’ wares”).

17. Both the Explanatory Notes to headings 19.01 and 19.05 contain references which could be associated with uncooked pizza. The EN to heading 19.01 refers to “ready-mixed doughs” (item (II) (7)), while the EN to heading 19.05 refers to “pizza” (item (A) (14)). The Secretariat has therefore carried out a study concerning the history of these Explanatory Notes.

Heading 19.05

18. As pointed out by the Norwegian Administration, “pizza” is mentioned in the Explanatory Note to heading 19.05 (item (A) (14)) :

“(14) Pizza, consisting of a bread dough covered with various other ingredients such as cheese, tomato, oil, meat, anchovies.”

19. The Secretariat’s study concerning the history of this Explanatory Note, revealed that this text was transferred from the Explanatory Note to CCCN heading 19.08, without any modification. Furthermore, this text was based on a proposal by France made at the Nomenclature Committee’s 44th Session (April 1980) to insert, in addition to quiche lorraine, other products (pizza and stuffed pancakes) as examples of products containing meat, etc., falling within heading 19.08 (Doc. 26.300, Annex E/4, paragraph 8).

20. At first, the Committee decided not to adopt an inclusion reference for either quiche lorraine or pizza in the EN to heading 19.08 given the wide variety of products involved and the consequential variations in classification given to them. It was therefore agreed that the Secretariat should study this question further.

21. In the study carried out by the Secretariat (Doc. 26.543, paragraph 5) it was concluded that pizza should be classified in heading 19.08. In this regard it was noted that pizza consists primarily of the same type of dough which is used to make bread, i.e. a mixture of flour, water and yeast, and thus it would appear to have the essential character of a bakery product.

22. The Nomenclature Committee, therefore, at its 45th Session, adopted the text as it now stands. However, the classification of uncooked (or partially cooked) pizzas were not considered at that moment.

Heading 19.01

23. According to item (II) (7) in the Explanatory Note to this heading it includes :

“(7) Ready-mixed doughs, consisting essentially of cereal flour with sugar, fat, eggs or fruit (including those put up in moulds or formed into final shape).”

24. This Explanatory Note was approved at the Harmonized System Committee's 12th Session (October 1993). At that time, a proposal was made by the Finnish Customs Administration to insert a reference to frozen dough products which had been formed into the final shape of a bread in the Explanatory Notes to Chapter 19. In the Finnish Administration's view, such products could not be regarded as dough of heading 19.01, but should be regarded as unfinished bread (pastry) of heading 19.05, as they had been given the final shape.
25. The Harmonized System Committee, however, did not agree with the Finnish view and decided to classify unbaked frozen dough which had been formed into the final shape of pastry in heading 19.01 (Doc. 37.700, Annex G/2).
26. The Secretariat has also consulted encyclopedias to see whether an uncooked pizza could be regarded as pizza. According to "the New Encyclopædia Britannica" pizza is a "dish of Neapolitan origin consisting of a flattened disk of bread dough topped with olive oil, tomatoes and mozzarella cheese, baked quickly and served hot". "The New Shorter Oxford English Dictionary" and the "Larousse Gastronomique" have similar definitions.
27. From the study carried out by the Secretariat it appears that the Committee previously has been of the opinion that heading 19.05 does not contain uncooked products.
28. It could be argued, as pointed out by Norway, that uncooked pizza could be classified in heading 19.05 by virtue of GIR 2 (a) as an unfinished article having the essential character of the finished article. In this regard, the Secretariat would, however, remind the Committee that, according to the Explanatory Notes (page 2), this part of the GIR's does not normally apply to goods of Sections I to IV.

IV. CONCLUSION

29. The Committee is invited to :
- (i) rule on the classification of uncooked pizza, described in paragraphs 5 and 6 above, taking into account the Norwegian Administration's comments and the Secretariat comments in paragraphs 16 to 28 above;
 - (ii) decide what further action should be taken to reflect the Committee's decision.

Uncooked pizza consisting of a pizza base and a topping. The pizza is put up in a retail packing of net weight 580 g. The ingredients are wheat flour (33 %), water (30,8 %), cheese (9,2 %), margarine cheese (4,6 %), white mushrooms (5,2 %), beef (4,7 %), onion (3,2 %), tomato puree (2,8 %), vegetable (olive) oil (1,4 %), yeast (1,1 %), salt (0,9 %), sugar (0,9 %), rising agent (0,5 %), malt extract (0,4 %), partly hydrogenated vegetable oil (0,3 %), modified starch (0,2 %), garlic (0,2 %) and spices (0,1 %). Before consumption the pizza has to be cooked for 15 to 20 minutes (hot oven) or 20 to 25 minutes (cold oven).