



HARMONIZED SYSTEM
COMMITTEE

-
27th Session
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NC0400E1
(+ Annexes I and II)

O. Eng.

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CLASSIFICATION OF CONCENTRATED MILK WITH ADDED SUGAR

(Item IX.2 on Agenda)

I. BACKGROUND

1. On 26 January 2001, the Secretariat received a note from the European Community (EC) asking it to submit to the Harmonized System Committee the HS classification of concentrated milk with added sugar. This request was prompted by the fact that the product at issue is the subject of a dispute between the EC and the Cameroon Customs Administration which could not be resolved bilaterally. The EC comments are set out below.

II. NOTE FROM THE EUROPEAN COMMUNITY

“Subject : Harmonized System (HS) classification of concentrated sweetened milk.
Dispute between the European Community (EC) and Cameroon.

Ref. : Article 10 of the HS Convention

BACKGROUND

2. The EC wishes to present to the Harmonized System Committee a dispute between the EC and the Cameroon Administration regarding the tariff classification of a foodstuff known as “Bonnet Bleu”.
3. According to analyses carried out by the Netherlands Administration and the manufacturer (Annex 1), this product is concentrated milk with added sugar, having the following composition :

Fat	6.9 %
Milk solids non-fat	15.1 %
Water	29 %
Sucrose	48.7 %
Stabilizers	< 0,2 %

File No. 2853

4. The EC considers the concentrated milk containing added sugar as described above to be classifiable in subheading 0402.99 by direct application of GIR 1 of the Harmonized System Nomenclature.
5. However, Cameroon seems to think that this product is classifiable in subheading 1901.90 as a “food preparation of goods of headings Nos. 04.01 to 04.04”. In the note set out at Annex II hereto, Cameroon justifies the classification by application of GIR 2.
6. In accordance with Article 10 of the HS Convention, the EC has tried to reach a bilateral agreement with the Cameroon Administration. In a fax of 9 November 1999, the Netherlands notified Cameroon of this disagreement. In a letter of 12 December 2000, the EC also sought agreement on the classification of this product in HS heading 04.02. To date, the EC has received no reply.

CLASSIFICATION ISSUE

(1) Classification in HS heading 04.02

7. The EC has difficulty following the reasoning of the Cameroon Administration, which justifies its classification on the basis of GIR 2. Cameroon has not indicated which part of this rule it applies, however, the EC can only assume that it is GIR 2 (b) : mixtures and combinations of materials or substances.
8. Apart from the difficulty in applying this GIR to “Bonnet bleu”, the EC feels that the product may be classified by direct application of the text of headings 04.04 or 19.01. This permits classification in both cases by application of GIR 1, without recourse to GIR 2 (b).
9. At any rate, and in the light of analyses by the Netherlands Customs Administration and the Dutch exporter, the EC would support classification in subheading 0402.99 simply by application of the text of the subheading : “milk and cream, concentrated or containing added sugar or other sweetening matter”. Possible classification of this product in heading 19.01 could remove a large part of the content of heading 04.02, which is a very important heading for world trade.
10. Moreover, Part (III) of the Explanatory Note to heading 19.01 on page 147 provides some information on the products falling in this part of the heading. It states that the “preparations of this heading may be distinguished from the products of heading 04.01 to 04.04 in that they contain, in addition to natural milk constituents, other ingredients not permitted in the products of those earlier headings”. The EC therefore questions what ingredients might be present in the composition of “Bonnet Bleu” preventing it from being classified in heading 04.02. None of the examples cited in this Explanatory Note or in the General Explanatory Note to Chapter 19 refer to products of the “Bonnet Bleu” type. However, there is nothing in the Explanatory Note to heading 04.02 to make the EC think that this product is excluded from that heading.

(2) Classification in heading 19.01

11. Having said that, the EC points out that the 6.9 % indicated corresponds to fat of animal origin. This seems obvious given that the analyses carried out did not specify otherwise, as well as for economic reasons in the manufacturing process for this type of product.

12. In this respect, the EC feels that classification in heading 04.02 is justified by the fact that “Bonnet Bleu” contains 6.9 % animal fat. Had it however been made up of vegetable fat, classification in heading 19.01 could have been considered.

CONCLUSION

13. “Bonnet Bleu” consists of concentrated milk containing added sugar. This product has been examined on several occasions by the Customs laboratory in Amsterdam. All the examinations carried out showed that “Bonnet Bleu” was sweetened condensed milk and did not contain non-lactic matter.
14. Given the actual admission of these goods for exportation and the results of the examination of samples carried out by the Customs laboratory, the EC classified this product in subheading 0402.99.
15. The EC therefore considers the classification of “Bonnet Bleu”, described above, in HS heading 04.02 to be correct by application of GIR 1, given that this product contains only milk fat of animal origin.
16. As this is a dispute with the Cameroon Administration for which it has proven impossible to reach a bilateral solution, the EC requests that this issue be submitted to the HS Committee in accordance with Article 10 of the HS Convention.

Annexes : 1. Results of the Netherlands Customs laboratory analysis and those of the “Friesland Coberco Dairy Foods Company”.
2. Administrative instruction 0038/MINEFI/DD3/SDL of 24 August 1998 from Cameroon Customs Headquarters.”

III. SECRETARIAT COMMENTS

17. Since the matter is a dispute between two HS Contracting Parties, the Secretariat will leave it for the Committee to decide on the classification in accordance with the provisions of the HS Convention.
18. The Secretariat agrees with the EC that heading 04.02 (“Milk and cream, concentrated or containing added sugar or other sweetening matter”) and heading 19.01 (“food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included”) would merit consideration for classification of the product at issue.
19. However, based on a previous decision by the HS Committee, the Secretariat is of the view that heading 21.06 also should to be taken into consideration for food preparations containing milk and sugar.
20. At its 22nd Session (November 1998), the HS Committee decided to classify a product containing 69 % sugar, 29 % milk powder and 2 % dextrin in heading 21.06 (subheading 2106.90). During the discussion on the classification of this product it was stated that no limit for added sugar was prescribed in the context of heading 04.02. However, products of heading 04.02 should retain the character of milk preparations (Doc. 42.750, Annex H/12, paragraph 6).

21. Calculated on the dry matter, the product at issue contains approximately 9.7 % fat, 21.3 % milk solids non-fat and 68.7 % sucrose. In the Secretariat's opinion, for classification purposes, the product described in paragraph 20 and the product at issue seem very much alike. Accordingly, heading 21.06 should also be taken into consideration.

IV. CONCLUSION

22. The Committee is invited to examine the classification of the product described above, taking account of the Secretariat's comments in paragraphs 17 to 21 above. It is also invited to indicate any action to be taken to reflect its decision.

Food preparation consisting of 48.7 % sucrose, 29 % water, 15.1 % milk solids non-fat, 6.9 % fat and less than 0.2 % stabilizers.

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**Results of the Netherlands Customs laboratory analysis (1) and those of the
“Friesland Coberco Dairy Foods Company (2)”**

(1)

The samples were received in good condition and with undamaged seals.
The request has been booked on 14-01-99.
The sample did not show sound trade quality defects.

Found after examination :

The sample consists of condensed, sweetened milk.

Fat content (Röse-Gottlieb) : more than 6.9 %; rounded : 6.9 %.

The dry milk solids-not-fat content is 15 % or more.

The results of the analysis are in accordance with the declared sucrose content, i.e., 48.5 %.

The presence of milk foreign constituents was not demonstrable.

The classification advice is based on the net content of the immediate packing of not more than 2.5 kg.

(unofficial translation)

(2)

CERTIFICATE OF ANALYSIS

I, the undersigned T. Harkema, herewith certify that the analysis of undermentioned merchandise is as follows :

Manufacturer :	FRIESLAND Coberco Dairy Foods
Merchandise :	Concentrated milk with sugar
Brand :	Bonnet Bleu
Packing :	24 x 1000 g

Analysis (average) :

Fat	6.9 %
Milk solids non-fat	15.1 %
Water	29.0 %
Saccharose	48.7 %
Stabilizer	<0.2 %

Date of issue

T. Harkema

Quality Assurance Manager
FRIESLAND Coberco Dairy Foods
B.U. Export

* * *

Administrative instruction 0038/MINEFI/DD3/SDL from Cameroon Customs Headquarters dated 24 August 1998

Concentrated sweetened milk-based food preparations imported into Cameroon are being wrongly classified under Chapter 04 as concentrated milk with added sugar of subheading 0402.99.00 (CEMAC category I).

We would point out to those concerned that under General Rule No. 2 for the Interpretation of the Harmonized System, concentrated sweetened milk-based food preparations fall to be classified under heading 1901.90.90 as food preparations of goods of heading Nos. 04.01 to 04.04.

This applies to the following concentrated sweetened milk-based food preparations, which should henceforward be classified as CEMAC category IV products under subheading 1901.90.90.

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|-----------------------|---|
| 1. Nestlé Gloria | concentrated sweetened milk foodstuff |
| 2. Bonnet Bleu | milk-based sweetened concentrate |
| 3. Alban | milk-based sweetened concentrate |
| 4. Vita Quick | milk-based sweetened concentrate containing 8 % vegetable fat |
| 5. Farm | milk-based sweetened concentrate |
| 6. B&B | milk-based sweetened concentrated foodstuff |
| 7. Belle Hollandaise | milk-based sweetened concentrated foodstuff |
| 8. Sali | milk-based sweetened concentrated foodstuff |

I would ask officials to be alert and read carefully the labels of all brands of milk-based sweetened concentrated food preparations entering Cameroon to check on their exact nature.

C. DEFINITION OF MILK

The dispute between Cameroon Customs (and the SGS) and importers of concentrated milk or milk powder relates to the definition of milk. The view of the Cameroon Customs is that milk must contain only animal fat. Many imported milk products are made using vegetable fat and Customs therefore classifies them as food preparations not containing cocoa powder, and not as concentrated milk or milk powder.

CONCLUSION

There are two alternatives : either imported milk products do not contain vegetable fat, or they do.

In the first case the importer (or the European supplier) can contact the SGS in Doula and provide further information in support of its position vis-à-vis Customs.

In the second case reference should be made to the WCO's Explanatory Notes to the Harmonized System for commodity classification to judge whether the heading assigned by the SGS and Cameroon Customs is correct. Should this heading be considered incorrect the matter could be taken up by the Harmonized System Committee in Brussels.

However, even if products sold as “powdered milk” or “concentrated milk” do contain vegetable fat they are staple consumer products, particularly for children. These considerations should be brought to the attention of the Cameroon Government in the event of a review of its Customs Revenue Policy.
