



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
25th Session
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NR0225E1
(+ Annexes I to V)

O. Eng.

Brussels, 17 January 2002.

POSSIBLE AMENDMENT OF HEADING 21.06 TO SPECIFICALLY
MENTION "FOOD SUPPLEMENTS"

(Item III.A.15 on Agenda)

Reference documents :

NR0187E1 (RSC/24)
NR0205E2, Annex D/5 (RSC/24 – Report)

I. BACKGROUND

1. At its 24th Session (September 2001), the Review Sub-Committee examined a proposal from the Secretariat to include a reference to "food supplements" in heading 21.06. The Director informed the Sub-Committee that the reason for this proposal was that the Secretariat every year received numerous questions from administrations as to the classification of "food supplements". In his view, the legal situation with regard to the classification of such goods should be improved. He was aware that the Secretariat's proposal might involve the transfer of goods from other headings, and that this possibility had to be further studied. As a starting point, he wanted to see whether there was some support for the Secretariat's proposal in the Sub-Committee before elaborating further on this issue.
2. Several delegates pointed out that the Secretariat's proposal involved a huge definitional problem as to what "food supplements" were. These delegates were of the view that "food supplements" had to be defined in a legal Note. Without a precise definition, the Secretariat's proposal could certainly entail an enormous transfer of goods from other headings.
3. One delegate indicated that the Explanatory Note to heading 21.06, Item (16), might serve as a basis for a legal definition.

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4. Certain other delegates mentioned that their administrations had also had classification problems with regard to “food supplements”. These delegates therefore supported the Secretariat’s approach to insert a legal provision for such goods in heading 21.06. In this regard it was pointed out that the Secretariat’s proposal implied that heading 21.06 was also a residual heading for “food supplements”. It was therefore proposed to change the text to read :

"21.06 Food supplements; food preparations not elsewhere specified or included."

5. The Delegate of **Brazi** informed the Sub-Committee that the **Mercosur** countries, in their external common tariff, had inserted a subheading for “food-supplements” under heading 21.06, and that these countries had encountered no problems in this respect. The Delegate of **Ghana** also stated that the tariff of his country had a national subheading for “food supplements”.
6. After further discussion, the Sub-Committee agreed that this question should be re-examined at its next session on the basis of a new document to be prepared by the Secretariat, with possible contributions from Contracting Parties, containing a proposal to define “food supplements”.

II. COMMENTS FROM ADMINISTRATIONS

7. In response to a letter sent to all Contracting Parties by the Secretariat, at the time of preparation of this document the Secretariat had received comments from the Administrations of **Azerbaijan**, **Mexico**, **Morocco**, **South Africa** and **Uzbekistan**. These comments are set out in Annexes I to V, respectively, to this document.
8. The **Moroccan** and **Uzbekistan** Administrations were in favour of amending the heading text, provided that a legal Note defining “food supplements” was created.
9. The **Azerbaijan** and **Mexican** Administrations were also in favour of amending the heading text. In addition, these administrations wanted to insert a separate subheading for such products in heading 21.06. Furthermore, the **Mexican** Administration also favoured a definition in the legal texts.
10. The **South African** Administration was of the opinion that a legal definition was not necessary. However, it was proposed that the heading text should read :

“21.06 Food preparations and other preparations based on foodstuffs, or based on substances with nutritive value (including food supplements), not elsewhere specified or included”.

III. SECRETARIAT COMMENTS

11. The five administrations that submitted comments to the Secretariat were all in favour of amending the legal texts. One administration proposed an alternative heading text, and two administrations proposed a separate subheading for “food supplements”. However, although three administrations were in favour of a legal definition, no concrete proposal has

been submitted as to the possible amendments of the legal texts with regard to the definition of food supplements.

12. In accordance with the Sub-Committee's instructions (see paragraph 6 above), the Secretariat has prepared a definition for "food supplements". Since no proposals have been submitted, the Secretariat feels that the best approach is to use the Explanatory Note to heading 21.06, Item (16) as a basis. In addition, the Secretariat has inserted more details with regard to these products' possible presentation and ingredients :

"For the purposes of heading 21.06, the expression "food supplements" means preparations whose purpose is to supplement the intake of nutrients to be found in a normal diet. Food supplements are based on plants extracts, fruit concentrates, honey, fructose, etc. and contain added vitamins, minerals, amino acids, essential fatty acids, etc. They are marketed in dose form (capsules, tablets, pills, sachets of powder, ampoules of liquids, etc.), and are often put up in packages with indications that they maintain general health or well-being.

Similar preparations, however, intended for the prevention or treatment of diseases or ailments are excluded (heading 30.03 or 30.04)."

13. It could be argued that a definition for "food supplements" should include maximum levels of the vitamins and minerals they could contain, in order to facilitate the dividing line between "food supplements" of heading 21.06 and related products of headings 30.03 and 30.04. The Secretariat is, however, of the opinion that it would be difficult to find a compromise solution in this respect, since such maximum levels of vitamins and minerals might vary from country to country.
14. As to the proposals from the Azerbaijan and Mexican Administrations to insert a specific subheading for food supplements, it may be recalled that the Secretariat, at the Review Sub-Committee's 19th Session (March 1999), proposed to insert a separate subheading in heading 21.06 for "preparations for special dietary foods (including medical foods and food supplements)". It was, however, not possible to reach consensus on this proposal (or on the proposal to amend the heading text) in the Sub-Committee (see Annex A/9 to Doc. NR0045E2) or in the HS Committee (see Annex F/1 to Doc. NC0090E2, paragraphs 41 and 42).
15. The Secretariat is of the opinion that the Sub-Committee should concentrate its efforts on the examination of the proposed heading text and the proposed definition of "food supplements" at this stage. If the Sub-Committee could come to an agreement on these proposals, the next step could eventually be to create a separate subheading for such preparations.
16. As pointed out in Doc. NR0187E1, this proposal would not, in the Secretariat's view, entail a transfer of goods from Chapter 30. However, within Sections I to IV, the proposed amendments would involve a considerable transfer of goods. Based on the Sub-Committee's decision, these transfers could be examined at a future session of the HS Committee.

III. CONCLUSION

17. The Sub-Committee is therefore requested to decide, whether :
- (1) to retain the status quo, as expressed by several delegates at the last session of the Sub-Committee, entailing no legal amendments;
 - (2) to amend heading 21.06, as set out in paragraph 4 above, or as proposed by **South Africa** in paragraph 10 above;
 - (3) to insert a new legal Note in Chapter 21 defining “food supplements”, as proposed by the Secretariat in paragraph 12 above; or
 - (4) to insert a new subheading in heading 21.06 for “food supplements”, as proposed by **Azerbaijan** and **Mexico**.

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COMMENTS BY THE AZERBAIJAN ADMINISTRATION

“The heading text “Food preparations not elsewhere specified or included” is consistent with the Explanatory Note to heading 21.06.

However, food raw materials, food products and their supplements are all food products and cover dietetic food products (prophylactic and curative). Hence Azerbaijan proposes adding the subheading of dietetic food products to apply to food products before subheading 2106.90 in the Harmonized System.

As regards the breakdown, classification and grouping of the goods of heading 21.06 (“Food preparations not elsewhere specified or included”), Azerbaijan considers it vital that this question be re-examined by the Sub-Committee.”

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COMMENTS BY THE MEXICAN ADMINISTRATION

“In this respect, the Mexican Administration considers it appropriate and necessary to create a subheading including these goods, especially as this will meet the need to define the scope of the term “food supplements” in the Legal Notes to the Harmonized System. Mexico’s criteria for the concepts contained in Item (16) of the Explanatory Note to heading 21.06 are insufficient to understand the different formulas for these products Mexico therefore recommends that a Legal Note be prepared defining these food complements or supplements according to the following criteria :

- They would have a nutritional value, containing proteins, carbohydrates or lipids, plus minerals, vitamins or other supplementary nutritional components.
- To differentiate between preparations using vitamins and those contained in heading 30.03 or 30.04, the preparation’s contents should be limited to the daily doses recommended by the relevant international bodies to maintain the organism in good health.
- Given the first point, many natural formulas such as chromium picolinate capsules, cat’s claw, etc. would limit the concept of “food supplements”, as they have no nutritional, prophylactic or therapeutic value. Mexico’s laboratory is currently using the above criteria to resolve this problem.”

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COMMENTS BY THE MOROCCAN ADMINISTRATION

“Please note that the Moroccan Administration is in favour of the proposed amendment, subject to the creation of a legal Note defining “food supplements” in Chapter 21.”

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COMMENTS BY THE SOUTH AFRICAN ADMINISTRATION

"As mentioned by our delegate during the Regional Seminar that was held in Kenya, this Administration also considers "food supplements" to be classifiable within heading 21.06, but is also of the opinion that the legal text does not adequately provide for the products at issue.

Cognizance has been taken of the Secretariat's comments in paragraphs 3 to 8 of the document, and the following comments are made thereon :

The term "food supplements" is already described in paragraph 16 to heading 21.06, as "preparations with indications that they maintain general health or well-being".

Food supplements for animals are included in heading 23.09. Although there is no legal note to define the supplements classifiable within heading 23.09, the scope of the heading text is broad enough to cover such preparations, and they are also described in paragraphs (B) and (C) on pages 187 and 188 of the Explanatory Notes (HS 96).

It is the opinion of this Administration that there is no necessity for a definition of the subject products to be inserted as a legal Note. Food supplements are basically a mixture of chemicals (vitamins, minerals etc.), which are substances with nutritive value, thus the following text is suggested for 21.06 : **"Food preparations and other preparations based on foodstuffs, or based on substances with nutritive value (including food supplements), not elsewhere specified or included"**.

The reference to "preparations with nutritive value" will thus also cover products that may not be considered to be food supplements by definition, but which contain nutritive substances and are for example used to suppress the craving for food, or as laxatives etc.

This Administration has noted with interest that Chapter Note 1 (b) to Chapter 38 excludes "Mixtures of chemicals and foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs (generally heading 21.06)". This is further elaborated upon in the General Explanatory Notes to this Chapter.

Under heading 21.06, paragraph (B), there is reference to the General Explanatory Notes to Chapter 38, and mixtures of chemicals and foodstuffs are mentioned, but there is no reference in heading 21.06 to substances/preparations with nutritive value. Nor is there mention of mixtures with chemicals and substances with nutritive value, yet foodstuffs and substances with nutritive value do not appear to be synonymous.

Furthermore, to avoid the classification of goods of Chapter 22 being classified in heading 21.06, the fine printed paragraph under (16) can be amended to include the following : ... nuts or other edible parts of plants (heading 20.08) **and beverages of Chapter 22** ."

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COMMENTS BY THE UZBEKISTAN ADMINISTRATION

“With reference to the request (Ref. 01NL0876 – GI/FI of 5 October 2001) we support the text to the heading 21.06.”
