



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

NR0136E1

-
23rd Session
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O. Eng.

Brussels, 8 February 2001.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE
REGARDING THE CLASSIFICATION OF SAUCES

(Item III.A.1 on Agenda)

Reference documents :

41.320 (HSC/20 and HSC/21)	NC0185E1 (HSC/25)
42.092 (HSC/21)	NC0208E1 (HSC/25)
42.100, Annex IJ/2 (HSC/21 - Report)	NC0250E2, Annexes G/3 and H/11 (HSC/25 – Report)
42.441 (HSC/22)	NR0111E1 (RSC/22)
42.750, Annex G/15 (HSC/22 - Report)	NR0133E2, Annex D/1 (RSC/22 – Report)
NC0123E1 (HSC/24)	NC0292E1 (HSC/26)
NC0160B1, Annex G/4 (HSC/24 – Report)	NC0340E2, Annexes G/10 and P/1 (HSC/26 - Report)

I. BACKGROUND

1. At the 22nd Session (September 2000) of the Review Sub-Committee, many delegates expressed their views in support of the Secretariat's conclusion in Doc. NR0111E1 that it would be premature to examine possible legal amendments to Chapter 20 and/or Chapter 21 at this stage – not knowing the outcome of the HS Committee's examination regarding the relevant parts of the Explanatory Notes in November 2000.
2. In this regard, one delegate pointed out that the Sub-Committee dealt with legal text amendments to enter into force in the year 2007, meaning that, strictly speaking, it was not necessary to wait for the HS Committee's decision. On the other hand, there was enough time to wait for the result of the HS Committee's deliberations. He emphasized that it was very important to establish a dividing line between sauces of heading 21.03 and certain products of Chapter 20 present in a sauce. It was therefore necessary for the Secretariat (with contributions from Contracting Parties and the industry) to embark on a study at an early stage.
3. Another delegate noted that by waiting for the HS Committee to conclude its current work in this area, the Review Sub-Committee will have a more precise indication from the HSC of the current scope of the relevant heading. He further noted that so far no delegation

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to the HS Committee or Review Sub-Committee had indicated any intent to change the scope of the provisions.

4. Finally, the Sub-Committee concluded that this issue should be examined on the basis of the results of the HS Committee's examination with regard to the relevant parts of the Explanatory Notes.
5. At its 26th Session (November 2000) the HS Committee examined draft amendments to the Explanatory Notes to headings 20.01 and 21.03. The Committee first examined the question as to whether or not the amendments to the Explanatory Notes should reflect quantitative criteria.
6. Those who were in favour of quantitative criteria took the view that it was important to distinguish the classification of products between headings 21.03 and 20.05 based on manageable guidelines for the purpose of uniform classification in the Harmonized System. They stated that since different types of products were present on the market, classification on the basis of the trade names could be misleading.
7. The EC Delegate explained that the EC proposal set out guidelines in respect of the volume of vegetables or fruit usually contained in sauces. The figure 40 % was based on the "Chicken Tonight" product which had been examined by the Committee. He further explained that such a percentage should reflect commercial realities and was of the view that a quantitative criterion which was qualified by the word "normally" would not create legal problems, given that this was simply a "guiding" criterion. He considered that the current Explanatory Notes contained many other examples of such types of criteria.
8. Those who were not in favour of quantitative criteria were of the view that such criteria would unduly narrow the scope of heading 21.03 and might not reflect commercial realities. Since there were different eating habits throughout the world, they feared that there could be certain sauces which might be excluded from heading 21.03 due to such quantitative criteria. In this connection, it was pointed out that even a guideline, such as "normally exceeding 40 %", as proposed would eventually be used as a rigid criterion by front line Customs officers.
9. It was also pointed out that since quantitative criteria were not reflected in the legal texts it would cause legal problems if such quantitative criteria were set out in the Explanatory Notes.
10. When a vote was taken, the Committee agreed, by 20 votes to 17, not to introduce quantitative guidelines in the Explanatory Notes. The Committee therefore decided to proceed with the Secretariat's proposal as reflected in the Annex to the working document of the HS Committee's 25th Session (NC0208E1).
11. Subject to minor modifications, the Committee agreed that the texts as set out in Annex P/1 to NC0340E2 (HSC/26 – Report), which were placed in square brackets, would be examined by the next pre-session Working Party. The US Delegate stated that the following points should be taken into account in that context :
 - 11.1. the expression "certain food dishes" in the Explanatory Notes to headings 20.01 and 21.03 should be replaced by the expression "food dishes"; and

- 11.2. the expression "sometimes contain" in the Explanatory Note to heading 21.03 should be replaced by the expression "may contain".

II. SECRETARIAT COMMENTS

12. By the time of preparation of this document the Secretariat had not received any new proposals from interested Contracting Parties to amend the legal texts (see paragraph 2 above). The following definition of sauces applied by the EC in its Combined Nomenclature is therefore still the only proposal received by the Secretariat to amend the legal texts :

“For the purposes of heading 21.03, the expression “sauces” does not cover a preparation of vegetables, fruit or other edible parts of plants if the percentage of these ingredients passing through a metal wire sieve, with an aperture of 5 mm, is, after rinsing with water of a temperature of 20 °C, less than 80 % by weight, calculated on the original preparation.”

13. It appears that the EC proposal to amend the legal texts has some support (see Doc. NR0111E1, paragraph 11). On the other hand, at the 22nd Session of the HS Committee, several delegates already agreed that Explanatory Notes amendments would suffice to distinguish between sauces of heading 21.03 and certain products of Chapter 20 (see Doc. 42.750, Annex G/15, paragraph 7).
14. In view of the fact that the Harmonized System Committee has agreed on Explanatory Notes amendments, with regard to headings 20.01 and 21.03 to clarify the classification of sauces, and given the fact that the Secretariat has not received any new proposals from interested Contracting Parties to amend the legal texts, the Secretariat is in doubt whether the Sub-Committee really wants to insert a definition of sauces in the legal texts.
15. The Secretariat is aware that the classification of "Chicken Tonight" and similar sauces has often been subject to dispute, since the existing Explanatory Notes concerning such products are not quite clear. However, the Secretariat believes that the agreed Explanatory Notes will provide sufficient guidance as to the classification of such products. Legal amendments should therefore not be necessary. However, if the Committee is of another opinion, the Secretariat (with contributions from Contracting Parties and the industry) is prepared to make a proposal for consideration during the present review cycle.

III. CONCLUSION

16. The Sub-Committee is invited to consider whether legal amendments would be required with a view to distinguishing sauces of heading 21.03 from certain products of Chapter 20, taking into account the comments of the Secretariat in paragraphs 12 to 15 above.
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