



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

-  
24<sup>th</sup> Session  
-

NR0169E1  
(+ Annexes I to VI)  
O. Eng.

Brussels, 24 July 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)	NC0250E2, Annexes G/3 and H/11 (HSC/25 – Report)
42.092 (HSC/21)	NR0111E1 (RSC/22)
42.100, Annex IJ/2 (HSC/21 - Report)	NR0133E2, Annex D/1 (RSC/22 – Report)
42.441 (HSC/22)	NC0292E1 (HSC/26)
42.750, Annex G/15 (HSC/22 - Report)	NC0340E2, Annexes G/10 and P/1 (HSC/26 - Report)
NC0123E1 (HSC/24)	NR0136E1 (RSC/23)
NC0160E2, Annex G/4 (HSC/24 – Report)	NR0165E2, Annex C/1 (RSC/23 – Report)
NC0185E1 (HSC/25)	NC0371E1 (HSC/27)
NC0208E1 (HSC/25)	NC0430E2, Annexes G/3 and Q/7 (HSC/27 – Report)

I. BACKGROUND

1. At its 22<sup>nd</sup> Session (November 1998), the Harmonized System Committee examined the classification of "CHICKEN TONIGHT" – "Oriental Sweet and Sour Sauce", containing visible pieces of vegetables and fruit. The Committee decided to classify the product in heading 21.03, by application of General Interpretative Rule 1.
2. At its 24<sup>th</sup> Session (October 1999), following a reservation entered by the Norwegian Administration, the HS Committee re-examined the classification of this product and reconfirmed the classification of the product. It was also decided that during the next revision of the Harmonized System, the Secretariat should prepare draft amendments to the legal texts to be examined by the Review Sub-Committee. In drafting these amendments the Secretariat could take into consideration the definition of sauces applied by the EC in its Combined Nomenclature and any other proposals to be submitted to the Secretariat by interested Contracting Parties.

File No. 2687

3. At the Review Sub-Committee's 22<sup>nd</sup> Session (September 2000), many delegates expressed their views 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. After discussion, the Sub-Committee therefore 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.
4. At the Review Sub-Committee's 23<sup>rd</sup> Session (March 2001), one delegate pointed out that the nature of sauces varied from one region of the world to another. Consequently, it was difficult to find a definition of sauces which could be introduced at legal level in an internationally agreed nomenclature. He therefore agreed with the Secretariat that the new Explanatory Notes would provide sufficient guidance as to the classification of such products.
5. Another delegate indicated that there were no international standards or definitions of what constituted a sauce. Moreover, what constitutes a sauce may vary by country. Therefore, if quantitative criteria were put into the legal texts, a product that may be considered and commercially known as a sauce might be classified as other than a sauce because it did not satisfy the quantitative criteria, which were arbitrary in nature.
6. This same delegate recalled that the HS Committee had twice considered the classification of a product containing a large amount of solid material, and both times had decided to classify the product as a sauce of heading 21.03. He could agree with the Secretariat's conclusion that the agreed upon Explanatory Notes would provide sufficient guidance as to the classification of sauces, and legal text amendments were therefore not necessary.
7. The EC Delegate pointed out that the Harmonized System Committee's various close votes, when the classification of "CHICKEN TONIGHT" – "Oriental Sweet and Sour Sauce" had been discussed, indicated that the classification of such products was not clear. He shared the views expressed by the previous delegates that the definition of sauces differed from one region of the world to another, but strongly felt that the HS classification of sauces could not differ from one country to another. He therefore considered it vital to amend the legal texts to ensure uniform world-wide classification of fruits and vegetables in a sauce classifiable in Chapter 20 and of sauces containing fruits and vegetables classifiable in Chapter 21. He was flexible as to whether these new legal texts had to contain a quantitative criterion. He proposed that the Secretariat should study this matter further, on the basis of the proposals already submitted at an earlier stage, and new proposals to be submitted by Contracting Parties and the industry.
8. Certain other delegates were also of the view that legal text amendments were needed in order to avoid classifying products simply by taking account of trade names. The Sub-Committee therefore agreed to re-examine the issue at its next session on the basis of a new document to be prepared by the Secretariat (with contributions from Contracting Parties and the industry).
9. At its 27<sup>th</sup> Session (May 2001), the Harmonized System Committee provisionally adopted amendments to the Explanatory Notes with regard to sauces (headings 20.01 and 21.03). The amended texts (indicated by vertical lines in the margin) together with the relevant parts of the current Explanatory Notes are set out in Annex VI to this document.

## II. COMMENTS FROM ADMINISTRATIONS

10. 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 China, Cuba, Romania, Russia and South Africa. These comments are set out in Annexes I to V, respectively, to this document.
11. The Chinese and Cuban Administrations affirmed that they were against amending the legal texts. In their view, a legal definition of sauces would not be practical and could lead to the situation where a product that is considered and known commercially as a sauce could be classified otherwise in the Nomenclature.
12. The Romanian and Russian Administrations supported the idea of introducing a quantitative criterion in the legal texts, since this would ensure uniform worldwide classification of such products. In this regard, the Romanian Administration supported the idea of introducing a legal note based on the EC definition of sauces.
13. The South African Administration, after having consulted with various governmental agencies and the industry, concluded that they had experienced no difficulty in classifying such products.

## III. SECRETARIAT COMMENTS

14. Of the five administrations that submitted comments to the Secretariat, two administrations were in favour of amending the legal texts, while two other administrations were against. When this question has been discussed at past meetings, both in the Harmonized System Committee and in the Review Sub-Committee, these two views received fairly equal support. Furthermore, no concrete proposal has been submitted as to the possible amendments of the legal texts with regard to the definition of sauces.
15. In the Secretariat's view, it therefore appears questionable whether it will be possible to find a compromise solution to amend the legal texts which the Sub-Committee can agree upon. However, since the Secretariat has been instructed to prepare draft amendments to the legal texts, based on the definition applied by the EC in its Combined Nomenclature and any other proposals to be submitted to the Secretariat (see Doc. NC0160E2, Annex G/4 (HSC/24 – Report), the Secretariat has prepared the following draft amendments which are based on the EC proposals to amend the Explanatory Notes (see Doc. NC0292E1, Annex III), with the quantitative criterion being placed in square brackets :

### Chapter 20. New Note 1 (c).

Insert the following new Note 1 (c) :

“(c) Sauces of heading 21.03;”

(Present Note 1 (c) to be renumbered Note 1 (d)).

Chapter 21. New Note 3.

Insert the following new Note 3 :

“3.- For the purposes of heading 21.03, the expression “sauces” includes certain preparations, which are mainly liquids, emulsions or suspensions, but sometimes contain visible pieces of various ingredients such as vegetables or fruit **in a percentage not normally exceeding [40%] of the preparation’s weight.**”

(Present Note 3 to be renumbered Note 4)

16. This proposal differs mainly from the initial EC proposal in that the quantitative criterion has been changed. The first EC proposal read :

“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.”

17. It is quite clear that the new proposal set out in paragraph 15 above would be easier to apply than the previous proposal since the sieve criterion and the rinsing criterion have now been deleted. On the other hand, as the new proposal still contains a quantitative criterion, although in square brackets, the Secretariat doubts whether it is possible to find a compromise solution in this respect.

### III. CONCLUSION

18. The Committee is invited to consider whether legal amendments to Chapters 20 and 21 are necessary with regard to the classification of sauces. If so, the Sub-Committee is invited to examine the proposal set out in paragraph 15 above, taking into account the Secretariat comments in paragraphs 14 to 17 above, the comments from administrations set out in Annexes I to V, and the provisionally adopted Explanatory Notes with regard to sauces in Annex VI to this document.

\* \* \*

**COMMENTS BY THE CHINESE ADMINISTRATION**

“The Chinese Administration still considers that these goods should be classified in heading 21.03.

Our administration does not agree to amending the legal text, especially to insert a quantitative criterion in the legal text. This is because different people in different countries or regions have different eating habits and their preference as to the kind of ingredients and the percentage of the ingredients may vary considerably. Attempts to have a legal definition of sauces are not practical.

Fruits and vegetables in a sauce classifiable in Chapter 20 and sauce containing fruits and vegetables classifiable in Chapter 21 are for different purposes and are applied and served differently. Amending the Explanatory Notes may provide enough guidance to the uniform classification of sauces.”

\* \* \*



**COMMENTS BY THE CUBAN ADMINISTRATION**

“It appears difficult to find a single international definition for sauces, due to the fact that their characteristics vary from one region to another. Hence we do not consider it necessary to introduce an amendment to the legal texts, as it is clear in Chapter 21 (heading 21.03), that sauces are usually a preparation containing spices intended to enhance the flavour of certain foodstuffs, whereas Chapter 20 states that they can be in liquid form, emulsions or suspensions containing very little solid substance.

We consider that introducing a quantitative element requiring an amendment to the legal texts could lead to a situation where a product that is considered and known commercially as a sauce could be classified otherwise in the Nomenclature because it did not meet the quantitative criterion, which is arbitrary in nature.”

\* \* \*





**COMMENTS BY THE ROMANIAN ADMINISTRATION**

“The composition and definition of sauces differs from one country to another. The Romanian Customs Administration uses the definition of sauces applied by the EC in its Combined Nomenclature (Additional Notes to Chapter 21) to distinguish between the products of heading 21.03 and those of heading 20.05.

The Romanian Administration therefore supports the EC’s viewpoint.”

\* \* \*

**COMMENTS BY THE RUSSIAN ADMINISTRATION**

"In the Russian Customs Administration liquid seasoning and food dressing are regarded as sauces in terms of classification. Sauces are prepared from tinned food or fresh vegetables, fruits and other parts of plants with added seasonings and flavourings (for example, pepper, parsley, bay leaf, salt, mustard, sugar, spices, garlic, vinegar, etc.). Visible pieces of added components are permitted for sauces.

The Russian Administration considers that if a quantitative criterion will be inserted into the legal texts, it will ensure uniform worldwide classification of such products.

It should be noted that special terms are often used in the Harmonized System and taken into account when classifying different products.

The Russian Administration believes it is possible to leave the legal text of the Note about sauces classifiable in heading 21.03 unchanged.

In turn, the Russian Administration is ready to consult Russia's industry to get producers' opinions in regard of the legal text of the above-mentioned Note."

\* \* \*

### **COMMENTS BY THE SOUTH AFRICAN ADMINISTRATION**

"In response to your letter No. 01NL0514-GI/FI dated 5 June 2001, the South African Customs Administration would like to offer the following comments in respect of the classification of sauces :

- **Resources consulted-**

1. WCO Documents NC0292, NC0208, NC0123, NC0185 and NC0021
2. Webster's Dictionary
3. Mullins Food Products South Africa (Pty) Ltd – Ms. Sandra Volschenk
4. McCormick Glenthams (manufacturer of seasonings and flavours) – Mr. Vernon
5. South African National Dept. of Agriculture – Mr. David Malan
6. South African Dept. of Health (Food Control) – Ms. Maryke Herbst
7. South African Bureau of Standards (Food Section) – Ms. Anne White
8. South African Council for Scientific and Industrial Research (Food Tek) – Ms. Mandi Swanevelder

- **Definitons obtained-**

Sauce • "a condiment or composition of condiments and appetising ingredients eaten with food as a relish; a **fluid, semifluid**, or sometimes **semisolid** accompaniment of solid food; meat or fish stock or milk or cream thickened with flour or other starch, usually flavoured with a concentrate (such as that extracted from roast meat), seasoned with a variety of condiments or spices, and used for fish, meat, eggs or vegetables".

Condiment • "something usually pungent, acid, salty, or spicy added to or served with food to **enhance** its **flavour** or to give added flavour; an appetising, and usually pungent substance of natural origin (such as pepper, vinegar, or mustard); any of various complex compositions having similar qualities (such as curry or chilli powder, pickles or catsup)".

- **Feedback and comments-**

1. According to the South African Bureau of Standards (Food Section), there is no overall specification within their Standards that can be used as a guideline as to what is considered to be a sauce. They did, however, provide an extract from a book called "Chemical Analysis of Food", wherein it is mentioned that "Thick sauces usually consist mainly of fruits, onions, sugar, vinegar and spices. The commonest thin sauce is Worcester Sauce, which is highly spiced and has a sediment".
2. According to the National Dept. of Agriculture, defining what is considered to be a 'Sauce' does not fall within the scope of their work and they referred the South African Customs Administration to the Dept. of Health for possible assistance.
3. The Dept. of Health confirmed the definition in the dictionary, which defines 'Sauce' as a "Liquid or soft preparation taken as relish with some article of food". They also mentioned that the term 'Sauce' is not defined within the South African Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), the only proviso being "that any foodstuff be labelled with the name of the product, e.g., Worcester sauce, Tomato sauce, etc".

4. The Council for Scientific and Industrial Research (Food Tek Section) supplied similar information to that provided by the Dept. of Health, agreeing that the Foodstuffs Act did not provide any guidelines on this matter. In addition, they advised that they can only determine a 'Sauce' when it is for a specific product, for example, salad sauces, French or Greek, thickeners, mayonnaise, etc.
5. Mullins Food Products South Africa (Pty) Ltd, confirmed that a 'Sauce' could incorporate anything from a pre-packed ready-to-use product, an instant powdered product (which needed water or oil or a number of other ingredients for re-constitution), to the much thicker dips (which are also available in a ready-to-use or powdered form) and that one could classify according to its intended use by the consumer as stated on the product label.
6. According to the HS's GIR 1, 'Sauces' resort within tariff heading 21.03, and 'Soups' resort within tariff heading 21.04. The fine line between these products is what South Africa considers to be the difference. To date, South Africa has not yet experienced any difficulty in classifying these products."

\* \* \*

### HEADING 20.01 – AMENDED EXPLANATORY NOTE

“This heading covers vegetables (see Note 3 to this Chapter), fruit, nuts and other edible parts of plants prepared or preserved by means of vinegar or acetic acid, whether or not containing salt, spices, mustard, sugar or other sweetening matter. These products may also contain oil or other additives. They may be in bulk (in casks, drums, etc.) or in jars, bottles, tins or airtight containers ready for retail sale. The heading includes certain preparations known as pickles, mustard pickles, etc.

The goods covered by this heading differ from sauces of **heading 21.03** in that the latter are mainly liquids, emulsions or suspensions, which are not intended to be eaten by themselves but are used as an accompaniment to food or in the preparation of certain food dishes.

The principal products preserved by the methods described in this heading are cucumbers, gherkins, onions, shallots, tomatoes, cauliflower, olives, capers, sweet corn, artichoke hearts, palm hearts, yams, walnuts and mangoes.”

### HEADING 21.03 – AMENDED EXPLANATORY NOTE

#### “(A) SAUCES AND PREPARATIONS THEREFOR; MIXED CONDIMENTS AND MIXED SEASONINGS

This heading covers preparations, generally of a highly spiced character, used to flavour certain dishes (meat, fish, salads, etc.), and made from various ingredients (eggs, vegetables, meat, fruit, flours, starches, oil, vinegar, sugar, spices, mustard, flavourings, etc.). Sauces are generally in liquid form and preparations for sauces are usually in the form of powders to which only milk, water, etc. need to be added to obtain a sauce.

Sauces are normally added to a food as it cooks or as it is served. Sauces provide flavour, moisture, and a contrast in texture and colour. They may also serve as a medium, in which food is contained, for example, the velouté sauce of creamed chicken. Seasoning liquids (soy sauce, hot pepper sauce, fish sauce) are used both as ingredients in cooking and at table as condiments.

The heading also includes certain preparations, based on vegetables or fruit, which are mainly liquids, emulsions or suspensions, and sometimes contain visible pieces of vegetables or fruit. These preparations differ from prepared or preserved vegetables and fruit of Chapter 20 in that they are used as sauces, i.e., as an accompaniment to food or in the preparation of certain food dishes, but are not intended to be eaten by themselves.

Examples of products covered by the heading are : mayonnaise, salad dressings, Béarnaise, bolognaise (consisting of chopped meat, tomato purée, spices, etc.), soya sauces, mushroom sauce, Worcester sauce (generally made with a base of thick soya sauce, an infusion of spices in vinegar, with added salt, sugar, caramel and mustard), tomato ketchup (a preparation made from tomato purée, sugar, vinegar, salt and spices) and other tomato sauces, celery salt (a mixture of cooking salt and finely ground celery seeds), certain mixed seasonings for sausage making, and products of Chapter 22 (**other than** those of

**heading 22.09)** prepared for culinary purposes and thereby rendered unsuitable for consumption as beverages (e.g., cooking wines and cooking Cognac).”

---