



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

NR0458E1

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28<sup>th</sup> Session  
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O. Eng.

Brussels, 30 July 2003.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE  
REGARDING THE CLASSIFICATION OF WAFFLES

(Item III.A.4 on Agenda)

Reference documents :

NC0069E1 (HSC/23)	NC0510E2, Annex G/5 (HSC/28 – Report)
NC0127E1 (HSC/24)	NR0211E1 (RSC/25)
NC0146E1 (HSC/24)	NR0265E3, Annex C/1 (RSC/25 – Report)
NC0160E2, Annex G/8 (HSC/24 – Report)	NR0271E1 (RSC/26)
NC0283E1 (HSC/26)	NR0332E3, Annex C/1 (RSC/26 – Report)
NC0340E2, Annex G/1 (HSC/26 – Report)	NC0620E1 (HSC/30)
NC0384E1 (HSC/27)	NC0655E2, Annex G/10 (HSC/30 – Report)
NC0422E1 (HSC/27)	NR0341E1 (RSC/27)
NC0430E2, Annex H/1 (HSC/27 – Report)	NR0400E3, Annex C/2 (RSC/27 – Report)
NC0466E1 (HSC/28)	

I. BACKGROUND

1. At the Sub-Committee's 27<sup>th</sup> Session (March 2003), one delegate informed the Sub-Committee that his administration could accept the new proposal, including separate subheadings for waffles with a water content not exceeding 20% and for waffles with a water content exceeding 20%. As to the comments from CAOBISCO (Association of the Chocolate, Biscuit & Confectionery Industries of the EU), which had been distributed as a “non-paper” at the beginning of the meeting, he wondered whether the intention of the proposed 10% limit was to distinguish between waffles and wafers or between traditional waffles and frozen waffles. If the former was the case, separate subheadings could be introduced for “waffles” and “wafers”, respectively.
2. The EC Delegate pointed out that the existing Explanatory Note to heading 19.05 specified a 10% water content limit, and after having introduced the comments from CAOBISCO, confirmed that he was in favour of the 10% demarcation line. However, he could also accept the status quo – entailing no split of present subheading 1905.30.

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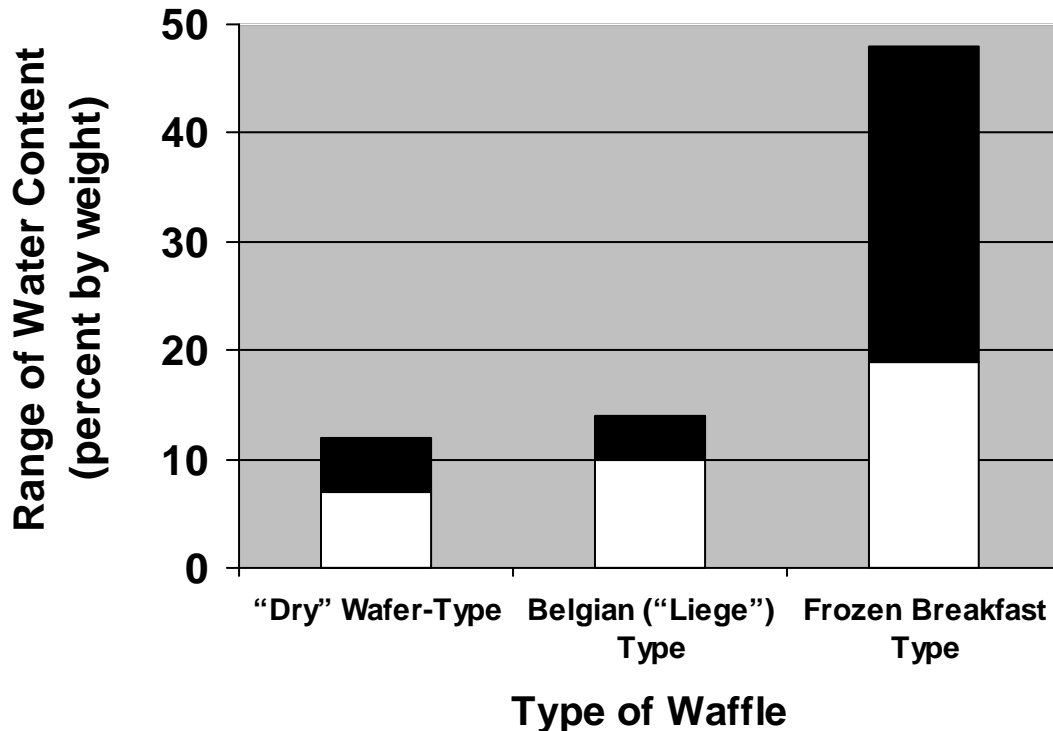
3. The **US** Delegate could not find any justification for the proposed 10 percent limit proposed by **CAOBISCO**. The six different types of waffles his administration had tested in conjunction with the classification dispute on “Kellogg’s Eggo Frozen Waffles” showed that shelf-stable waffles normally had a water content between 10% and 13.7%. It had always been a basic principle in the HS Nomenclature to establish borderlines where no products existed. A 10% limit would create an “overlap”, resulting in the classification of waffles in two different subheadings. The **US** Delegate also questioned the proposed 20% limit. He was aware that the intention of this proposal was to distinguish between frozen waffles and other waffles, but wondered whether there was enough trade in frozen waffles to justify the proposed subheadings. The market for such waffles was limited and exporters were not shipping as many as they had anticipated.
4. At this point, the Director emphasised that this item had been on the Agenda for a long time. In his opinion the Sub-Committee had reached a consensus at its last session to introduce the subheadings at issue and the only matter that was left had been to consult the industry with regard to the water content proposals in square brackets before final agreement on the texts. As to the proposal from one administration to introduce names (“waffles” and “wafers”) instead of water content limits, he noted that such names were used differently in different parts of the world and that translation into third languages would cause additional problems.
5. The Director further expressed the view that the non-paper from **CAOBISCO** had shifted the nature of the discussion from using the proposed water content criterion to distinguish between frozen and other waffles to distinguish between waffles and wafers. He felt that administrations would need more time to consider this new proposal and suggested that the Sub-Committee return to this question at its next session after administrations had had the opportunity to consult their industries.
6. After further discussions the Sub-Committee finally agreed to put both the 10% and 20% (by weight) criteria in square brackets in order to give administrations time to once more consult their industries, and to see whether any of the proposed water content limits worked to distinguish significant product groupings.
7. On 1 July 2003, the Secretariat received the following Note from the **US** Administration with regard to this issue.

## II. NOTE FROM THE **US** ADMINISTRATION

8. “For several years, the Review Sub-Committee has been discussing the possibility of subdivisions within heading 19.05 to distinguish among various forms of waffles. Since the Explanatory Notes (page 163, inclusion item (9)) referred to a limit on water content of 10%, one proposal was to elevate this criterion to legal level as a possible dividing line between different waffles.

9. While this debate was taking place in the RSC, the Harmonized System Committee decided that frozen breakfast waffles – which can have a water content well above 40% -- are classifiable in subheading 1905.32 (Waffles and wafers), by virtue of GRIs 1 and 6. (Annex G/10 to Doc. NC0655E2 – HSC/30 Report, November 2002). During its 31<sup>st</sup> Session (May 2003), the Committee changed the Explanatory Note to heading 19.05, removing the quantitative criterion.
10. Some of the administrations that initially favoured revising the Nomenclature by creating a dividing line at 10% water content later changed their support to a 20% dividing line. This may have been in response to the Committee's November 2002 ruling. However, during RSC/27 some of these administrations realigned their support back to a 10% line, based on a non-paper from a European trade association (CAOBISCO (Association of the Chocolate, Biscuit & Confectionery Industries of the EU)).
11. One critical fact has become clear to the United States during the long and indecisive debate on this issue : the term, "waffles" refers to several different products, and for each kind of product the water content can vary so widely that no distinction based on a numerical value for water content would distinguish one product from other kinds of waffles. For that reason we strongly oppose the proposal for further subdivisions of current subheading 1905.32.
12. As we have found, the wafer-type of waffles are relatively dry, with a water content from 7 to 12%. The Belgian-type of waffles ("Gauffres de Liege"), marketed fresh or preserved in sealed transparent bags, can have a water content from 10 to 14%. The frozen breakfast waffles that were the subject of the Committee's classification can have a water content from 19 to 48%. As the following chart illustrates, each of the numerical values considered by the Sub-Committee – 10 and 20% - is inside the range of values measured empirically for one of these categories. Creating a subheading defined by either criterion would result in similar products being split between two HS subheadings. Therefore neither of those quantitative distinctions would be good nomenclature.

## Range of Water Content of Major Types of Waffles in International Trade



13. It could be argued that some dividing line could be established between 14 and 19% to distinguish between the frozen breakfast waffles and the other products of subheading 1905.32. However, depending on changes in product manufacturing and ingredients, future shipments of frozen waffles may well have moisture content lower than 19%. In theory frozen waffles could have a water content as low as Belgian-type waffles; frozen waffles would then be split by a dividing line set somewhere between 14 and 19%.
14. The **US** trade and government strongly disagree with the views expressed by **CAOBISCO** in the non-paper circulated by the **EC** during RSC/27. Subheading 1905.32 already describes a very small product class. To split such a detailed class even further would result in :
- Excessive detail for an international Nomenclature
  - A huge burden on Customs officials to determine water content
  - New trade data that is of no value since it would not completely cover any category.
15. We note that subheading 1905.32 is a new subheading, which appeared only in 2002, and it seems premature to make a change so soon, before several years of data and analysis are available. As we suggested during RSC/27, we are not convinced that international trade in frozen waffles will be large enough to justify its own subheading in the

Harmonized System anyway. Further subdivision of the new subheading 1905.32 would be more appropriately done at the national level if an administration is interested in doing so; this administration is certainly not interested in any subdivision based on water content, whether in the Harmonized System or in our national Nomenclature.

16. During the last session of the Sub-Committee, the **EC** Delegate stated that although the **EC** had a slight preference for creation of new subcategories based on the 10% water limit, "he could also accept the status quo – entailing no split of present heading [1905.32]." (Annex C/2 to Doc. NR0400E3, paragraph 2). That delegation was the original proponent of both the 10% distinction and the 20% distinction. During the last session of the Harmonized System Committee, the Committee rejected proposed Nomenclature and Explanatory Note changes that would set quantitative limits for sauces. In doing so, the HSC has shown its distaste for further product distinctions for food preparations based on quantitative criteria. As with sauces, no international standards based on water content exist for waffles. For all these reasons we oppose any changes to subheading 1905.32 during this review cycle."

### III. CONCLUSION

17. The Sub-Committee is invited to take the comments of the **US** Administration, as set out above, into account when considering this agenda item.
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