



HARMONIZED SYSTEM
COMMITTEE

-
26th Session

NC0288E1

O. Eng.

Brussels, 26 September 2000.

CLASSIFICATION OF A TOBACCO MIXTURE KNOWN AS "BASIC BLENDED STRIP"

(RESERVATION BY POLAND)

(Item VII.6 on Agenda)

Reference documents :

NC0223E1 (HSC/25)
NC0250E2, Annex IJ/20 (HSC/25 - Report)

I. BACKGROUND

1. At its 25th Session (March 2000) the Harmonized System Committee examined the classification of a tobacco mixture known as "Basic Blended Strip (BBS)", consisting of a mixture of 75 % uncut stemmed leaves (i.e., "strip") and 25 % reconstituted tobacco.
2. The Committee decided, by 23 votes to 5, that the tobacco mixture in question should be classified in heading 24.01 (subheading 2401.20) (by application of GIRs 2 (b), 3 (b) and 6).
3. By letter of 10 May 2000, the Polish Customs Administration asked the Secretary General of the WCO to refer this issue back to the Committee for re-examination, in accordance with the provisions of Article 8.3 of the HS Convention and Council Decision No. 298.
4. On 29 August 2000, the Secretariat received the following Note from the Polish Administration putting forward arguments in support of the reservation it had entered in respect of the decision of the Harmonized System Committee (25th Session) concerning the classification at issue. This note is reproduced below.

File No. 2802

II. NOTE FROM POLAND

"Subject : Reservation with regard to the decision of the Harmonized System Committee concerning the classification of a tobacco mixture known as "Basic Blended Strip"

5. With reference to the reservation lodged by the Polish Customs Administration by virtue of paragraphs 2 and 3 of Article 8 of the HS Convention and paragraph 2 (a) (ii) of Council Decision No. 298, concerning the Harmonized System Committee's classification decision, at its 25th Session in March 2000, regarding the classification of a tobacco mixture known as "Basic Blended Strip" (Doc. NC0250E2/IJ/20), the Central Board of Polish Customs submits details outlining the reasons for its objection, in accordance with Rule 20 of the Rules of Procedures of the Harmonized System Committee.

Description of the product

6. According to the description presented by the US Customs Administration Doc. NC0223E1, the product for consideration was a tobacco mixture, known as "Basic Blended Strip (BBS)", consisting of a mixture of :
- (1) uncut stemmed leaves (i.e., "strip", which is an industry reference to leaves from which the mid-rib stem has been removed) of cured Virginia, Burley and, in some instances, Oriental tobacco; and
 - (2) reconstituted tobacco.
- The strip tobacco leaves and the reconstituted tobacco are mixed together by controlled layering in a silo.
7. According to the explanation from the manufacturer, presented by the US Customs Administration, BBS is produced by :
- (1) stemming natural leaves;
 - (2) separating stemmed leaves on a vibrating conveyor;
 - (3) mixing Virginia/Oriental leaves with reconstituted tobacco;
 - (4) moistening;
 - (5) in the case of Burley-type tobacco leaves, casing pre-blended tobacco;
 - (6) collecting and mixing in silos of the stemmed Burley tobacco leaves with the stemmed Virginia tobacco leaves/reconstituted tobacco; and
 - (7) packing for shipping.
8. In its condition as imported, BBS is not ready for smoking. BBS must be cased, cut and blended with other ingredients, to form the tobacco mixture or "cut filler" used in cigarettes.

9. Laboratory analysis of BBS samples by the US Customs Administration indicates that strip tobacco represents 75 % of the total mixture by weight, and reconstituted tobacco represents 25 % of the total mixture by weight.

Decision of the Harmonized System Committee

10. At its 25th Session in March 2000, the Harmonized System Committee decided, by 23 votes to 5, to classify the tobacco mixture known as "Basic Blended Strip", presented by the US Customs Administration in Doc. NC0223E1, in heading 24.01 (subheading 2401.20) (by application of GIRs 2 (b), 3 (b) and 6).

Justification of reservation lodged by Poland

11. Poland cannot agree with that Committee decision for the following reasons.
12. According to the information received by Poland from the manufacturer (Philip Morris Poland S.A.), BBS tobacco is a mixture, not ready for smoking, of uncut stemmed leaves of different types of tobacco (about 70 % of the total mixture by weight) with reconstituted tobacco, also referred to as "homogenized tobacco" or "tobacco foil" or "tobacco sheet" (about 30 % of the total mixture by weight). That product is designated for the production of only one kind of cigarette, i.e., Marlboro cigarettes.
13. However, it should be noted that, depending on the cigarette brand and the market for which BBS is used, the composition of that mixture is different. It may also contain Oriental tobacco.
14. Therefore the product described by the US Customs Administration differs slightly from the product which the Polish Customs Administration classifies in heading 24.03.
15. The manufacturing process that the product undergoes in the country of export, as indicated by Philip Morris, covers the following activities :
- (1) stemming of leaves and packing into hogshead or cartons;
 - (2) separation of the stemmed leaves on a vibrating conveyor;
 - (3) mixing Virginia stemmed leaves and reconstituted tobacco;
 - (4) moistening to increase the elasticity of the leaves and to maintain the integrity of the leaves during further processing;
 - (5) for the Burley type of stemmed leaves pre-blend **casing, including addition of humectants** (the substances for maintaining the humidity) **and substances to improve the flavour, aroma and improving qualities of tobacco**;
 - (6) collection and mixing together, **by controlled layering in silos**, of the stemmed Burley tobacco leaves and the mixture of stemmed Virginia tobacco leaves with reconstituted tobacco;
 - (7) packing in shipping boxes.

16. Subsequently, in the country of importation, the product is subjected to the following activities :
- (1) slicing (horizontal or vertical) of a batch of the BBS and other types of tobacco (e.g., Oriental or local tobaccos, depending on the country of cigarette production);
 - (2) moistening in a conditioning cylinder;
 - (3) application casing before cutting by saturation with a liquid of appropriate composition;
 - (4) blending of the different types of moistened and cased stemmed tobacco in silos;
 - (5) cutting of the stemmed tobacco into cut filler of size between 0.8 mm and 1.0 mm;
 - (6) drying to obtain a moisture content of approximately 13,5 %;
 - (7) blending of cut filler with processed tobacco stems and/or other forms of tobacco, such as expanded tobacco;
 - (8) after-cut flavouring;
 - (9) transferring the final aromatic cut filler to holding silos or boxes and later to the making and packing machinery used in the manufacture of the cigarettes;
 - (10) making cigarettes and packing into packs.
17. According to the Explanatory Notes (page 189), heading 24.01 covers "unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking)". The heading also covers "tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or liquored") with a liquid of appropriate composition **mainly in order to prevent mould and drying and also to preserve the flavour**".
18. However, according to the description put forward both by the US Customs Administration and by the importer, the majority component of the BBS mixture is made subject to **casing in order to improve the flavour, aroma and qualities of the tobacco**.
19. Casing, as a treatment entailing the addition of substances to maintain the humidity and substances to improve the flavour, aroma and qualities of the tobacco, **exceeds** the scope of heading 24.01.
20. In the light of the above, both of the components of the presented BBS mixture, i.e., the minority component and the majority component, meet the requirements of heading 24.03, but not those of heading 24.01.
21. Thus, in the opinion of the Polish Customs Administration, the Harmonized System classification of the product known as "BBS" may be and should be effected by application of General Interpretative Rules 1 and 6."

III. ARGUMENTS PUT FORWARD AT THE HS COMMITTEE'S 25TH SESSION

22. When this question was discussed by the HS Committee (25th Session), the US Delegate presented the arguments put forward by his Administration in Doc. NC0223E1 in support of classification of this product in heading 24.01. He stressed that the fundamental question revolved around the fact that this product constituted a mixture - a mixture that consisted of 75 % unmanufactured tobacco classified in heading 24.01, and 25 % reconstituted tobacco classified in heading 24.03. In his view, since heading 24.01 did not exclude mixtures, and since the unmanufactured tobacco provided the greater weight and bulk of the product, the product should be classified in heading 24.01, by application of GIRs 2 (b) and 3 (b).
23. Several delegates supported the US view. Furthermore it was argued that the unmanufactured tobacco not only provided the greater weight and bulk to the mixture, but in addition it gave the product its essential aroma and flavour. One delegate also pointed out that classifying this product in heading 24.03 could lead to the undesirable situation of classifying products containing only a few percent of reconstituted tobacco in that heading.
24. The Polish Delegate pointed out that this tobacco mixture was used for the production of a specific brand of cigarettes, and that a fixed content of reconstituted tobacco had to be present in these cigarettes to secure the required quality of the cigarettes. Furthermore, this product only required a simple cutting process before being used as a cut filler in cigarettes. She was therefore of the view that, due to the presence of 25 % reconstituted tobacco in the mixture, the product had lost its character as unmanufactured tobacco of heading 24.01 and, accordingly, had gained the character of manufactured tobacco of heading 24.03. By application of GIR 1, this product should therefore be classified in heading 24.03. In supporting her view, another delegate agreed that blending was an allowed process for products of heading 24.01, but in his view, the heading only covered intermixtures of the different natural tobaccos of that heading – not a mixture consisting of natural tobacco and reconstituted tobacco of another heading.

III. SECRETARIAT COMMENTS

25. From the comments in paragraphs 17 to 19 above, the Secretariat understands that the Polish Administration is of the view that tobacco of heading 24.01 may be "cased" only in order to prevent mould and drying or to preserve the flavour. Other "cased" tobacco, i.e., tobacco that is cased to improve the flavour and the aroma or keeping qualities should, according to the Polish Administration, be classified in heading 24.03.
26. Both in the General Explanatory Note to Chapter 24 and in the Explanatory Note to heading 24.01 there are references to the process of casing.
27. In the General Explanatory Note to Chapter 24, penultimate paragraph, it is stated that "in some cases, in addition to (or instead of) fermentation, flavouring or moistening substances are added (casing) in order to improve the aroma or keeping qualities". Furthermore, according to the Explanatory Note to heading 24.01, item (1), second paragraph, tobacco leaves of heading 24.01 may be "blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour...".

28. According to technical literature consulted by the Secretariat ("Encyclopedia of Agricultural Science" (Academic Press), Volume 4, page 334), "casing" is the process of adding flavouring and modifiers to tobacco by soaking, spraying, or dipping leaf lamina before it is cut into narrow strips called "rag". Cased tobacco is "toasted" at high temperatures to reduce harshness, and then reordered. Sugars, herbs, botanical oils, resins, and gums are added to tobacco to improve the moisture-holding capacity of the tobacco. These additives may be applied before ("casing") or after cutting.
29. The Secretariat is uncertain as to whether the above-cited Explanatory Notes and the definition in the "Encyclopedia of Agricultural Science" should be interpreted to accept only some limited "casing" for the products of heading 24.01.
30. However, when the Nomenclature Committee, at its 16th Session (April 1966), examined the distinction between tobacco of heading 24.01 and tobacco of heading 24.02 (HS heading 24.03), it was decided that simple "casing" or "flavouring" did not exclude from heading 24.01 tobacco which otherwise qualified for classification in that heading (Doc. 13.450, Annex F, second paragraph). Unfortunately, a distinction between simple casing and other casing was not established.

IV. CONCLUSION

31. The Committee is invited to re-examine the classification of a tobacco mixture known as "Basic Blended Strip (BBS)", as described in Doc. NC0223E1, taking into account the arguments put forward by the Polish Administration in paragraphs 5 to 21 above and the arguments put forward at the Committee's 25th Session (paragraphs 22 to 24 above), as well as the Secretariat's comments in paragraphs 25 to 30.
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