



HARMONIZED SYSTEM
COMMITTEE

-
27th Session
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NC0371E1

O. Eng.

Brussels, 28 March 2001.

AMENDMENTS TO THE EXPLANATORY NOTES
ARISING FROM THE CLASSIFICATION OF "CHICKEN SAUCE"
IN SUBHEADING 2103.90
(Item VII.3 on Agenda)

Reference documents :

NC0292E1 (HSC/26)
NC0340E2, Annex G/10 (HSC/26 – Report)

I. BACKGROUND

1. At its 26th Session, the Harmonized System Committee further examined the amendment of the Explanatory Notes arising from its classification of "CHICKEN TONIGHT – Oriental Sweet and Sour Sauce" in subheading 2103.90.
2. The Committee first examined the question as to whether or not the amendments to the Explanatory Notes should reflect quantitative criteria.
3. 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.
4. 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.

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5. 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.
6. It was also pointed out that since quantitative criteria were not reflected in the relevant legal texts it would cause legal problems if such quantitative criteria were set out in the Explanatory Notes.
7. 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 for the last session (NC0208E1).
8. The US Delegate proposed that the phrase “mainly liquids, emulsions or suspensions”, in the Secretariat’s proposal, be deleted because it would unduly restrict the scope of heading 21.03. Certain delegates however opposed this proposal, explaining that sauces could not be in solid form and therefore these references should be retained. There being no consensus, the matter was put to a vote. The Committee decided by 26 votes to 6 to retain the references to liquids, emulsions or suspensions.
9. Subject to minor modifications, the Committee agreed that the texts as set out in Annex P/1 to Doc. NC0340B2, which were placed in square brackets, should be examined by the next preessional Working Party. The US Delegate stated that the following points should be taken into account in that context :
 - 9.1 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
 - 9.2 the expression "sometimes contain" in the Explanatory Note to heading 21.03 should be replaced by the expression "may contain".

II. SECRETARIAT COMMENTS

10. The draft amendments to the Explanatory Notes as reflected in Annex P/1 to Doc. NC0340B2 are reproduced in the Annex to this document. With regard to the US suggestions, as indicated in paragraphs 9.1 and 9.2 above, the Secretariat would prefer to retain the expression “certain food dishes” rather than to replace it by the expression “food dishes” and could agree with the second suggestion to replace the expression “sometimes contain” by the expression “may contain”.
11. In addition, the Secretariat would suggest deletion of the example of pickles or mustard pickles in the second paragraph of Item (A), heading 21.03. Pickles or mustard pickles could never be confused with sauces. The Secretariat has therefore placed this questionable text in square brackets.

III. CONCLUSION

12. The Committee is invited to approve the proposed amendments to the Explanatory Notes once they have been finalized by the presessional Working Party.

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