



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
COMMITTEE

-
29th Session
-

NC0553E1
(+ Annex)

O. Eng.

Brussels, 28 February 2002.

POSSIBLE AMENDMENT OF THE EXPLANATORY NOTE TO HEADING 04.06

(PROPOSAL BY THE EC)

(Item IX.2 on Agenda)

I. BACKGROUND

1. On 5 February 2002, the Secretariat received the following note from the **EC** concerning the Explanatory Note to heading 04.06. The **EC** asked the Secretariat to include this question on the Agenda for the 29th Session of the Harmonized System Committee.

II. NOTE FROM THE EC

2. **Subject** : Amendment of Explanatory Note to heading 04.06.

The English and French versions of HS subheading 0406.40 read as follows :

EN : "Blue-veined cheese"

FR : "Fromage à pâte persillée"

3. A narrow interpretation of the English text would probably imply that only cheeses with a light or dark blue/greenish body were to be classified in this subheading. However, the French text can also be construed as including cheeses with a white/greyish pigmentation (veins).

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 2915

4. The original French and English versions of the HS Explanatory Notes offer little guidance :

EN : “(4) Blue veined cheese (e.g., Roquefort, Gorgonzola)”

FR : “(4) Les fromages à pâte persillée (Roquefort, Gorgonzola, etc.)”

5. The Explanatory Notes to the **EC Combined Nomenclature (CN)** provide the following guidance where these subheadings are concerned :

EN : “**Blue-veined cheese**

The main features of these cheeses is an irregular pigmentation due to the development of mould in the body of the cheese.

These subheadings cover all blue-veined cheeses such as Stilton, Blue Dorset, Saingorlon, Edelpilzkäse, Danish Blue, Mycella, Gorgonzola, Roquefort, Bleu d’Auvergne, Bleu des Causses and Bleu Quercy.”

FR : “**Fromages à pâte persillée**

Ces fromages sont caractérisés par une pigmentation irrégulière de la pâte due au développement de moisissures internes.

Les présentes sous-positions comprennent tous les fromages “bleus” à pâte persillée comme, par exemple : le stilton, le bleu de Dorset, le saingorlon, l’edelpilzkäse, le danablu, le mycella, le gorgonzola, le roquefort, le bleu d’Auvergne, le bleu des Causses et le bleu de Quercy.”

6. The first part of this **CN** Explanatory Note refers only to the pigmentation without mentioning its “colour”. Consequently, from a reading of this text it appears that all pigmented cheeses, such as cheeses with a white/greyish body, could also be covered by the subheadings in question.

7. In the second part of the Note, the English and French versions stipulate that “all blue-veined cheeses” are covered by subheading 0406.40 and give several examples of cheeses classifiable therein.

Classification of “white/greyish” pigmented (veined) cheese

8. The cheese in question is a pigmented cheese with a white/greyish pigmentation in the body, manufactured in the same way as blue-veined cheese. Here, however, the *Penicillium roqueforti* culture normally used for manufacturing blue-veined cheeses is replaced by a colourless mutant strain, *Penicillium roqueforti* PWI. At the end of this process, the body of the manufactured cheese has a greyish pigmentation (mould).
9. A culture consisting of a surface maturation (“*tache rouge*” or “red spot” formed on the basis of a culture of flax) is sometimes also used in the manufacturing process, which explains the formation of a reddish surface deposit. However, this does not affect the classification.

10. In the view of the **EC**, this type of cheese with a clearly visible greyish pigmentation in the body should be classified in subheading 0406.40.

PROPOSAL

11. The **EC** considers that this problem could also arise in connection with the other non-official languages of the HS Convention (for example, German, Danish and Spanish). It takes the view that the question raised is probably not a problem of alignment of the texts but merely a problem of the commercial and industrial terminology used in the various languages. Accordingly, the **EC** is not proposing any amendment of the legal texts.
12. On the other hand, it considers that it would be appropriate to amend the Explanatory Notes to define the precise scope of subheading 0406.40 so as to ensure the uniform application of the Nomenclature annexed to the HS Convention on a world-wide scale.

New Explanatory Note to Subheading 0406.40 :

EN: "This subheading also includes cheeses with a clearly visible white/greyish irregular pigmentation in the body of the cheese obtained by using colourless *Penicillium roqueforti* strains."

FR: "Relèvent également de cette sous-position le fromage présentant une pigmentation interne irrégulière blanc/gris qui s'obtient en utilisant des souches *Penicillium roqueforti* incolores."

II. SECRETARIAT COMMENTS

13. The **EC** proposal to introduce a Subheading Explanatory Note defining "Blue-veined cheese" of HS subheading 0406.40, relates to the existence of cheese described as "white/greyish pigmented (veined) cheese". According to the **EC**, this cheese is manufactured in the same way as blue-veined cheese, and should therefore be classified in subheading 0406.40. In their mind, the legal texts at issue are aligned. However, to clarify the situation, and to assist administrations which have to translate these texts into the other languages, it is proposed to insert the Subheading Explanatory Note reproduced in paragraph 12 above.
14. While the English text of subheading 0406.40 refers to "blue", the corresponding French text ("Fromages à pâte persillée") does not include such a reference. It could therefore be argued, as pointed out by the **EC** in paragraph 3 above, that these texts are not completely aligned. The Secretariat has therefore carried out a study concerning the history of this subheading.
15. The Secretariat's study revealed that the subheading text at issue stems from a proposal by the Secretariat, based on the Explanatory Note to CCCN heading 04.04 ("Cheese and curd"), Item (4), which read "Blue-veined cheese (e.g., *Roquefort*, *Gorgonzola*)". However, in the Secretariat's original proposal, the French text read "Fromages à pâte persillée, dits "bleus"" (see Doc. 22.044, Annex VI – A (March 1976)). Later, the expression "dits "bleus"" was deleted on the basis of a proposal from the **EC** (see Doc. 24.463, Annex IV) (July 1978). Regrettably, the Secretariat's file does not contain any

background information as regards the reason for this deletion. Nevertheless, since the EC did not propose to amend the subheading text at issue, and since the Secretariat has not received any other information indicating problems with the existing texts, the Secretariat sees no reason to propose amendments to the legal texts at this stage.

III. CONCLUSION

16. The Committee is invited to examine the proposed amendments to the Explanatory Note to heading 04.06, as set out in the Annex to this document, taking into account the observations of the Secretariat in paragraphs 13 to 15 above.

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