



HARMONIZED SYSTEM
COMMITTEE

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(+ Annex)

O. Eng.

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CLASSIFICATION OF A FANTA BEVERAGE BASE

(Item VIII.22 on Agenda)

I. BACKGROUND

1. In its letter of 8 November 2001, the Romanian Customs Administration requested the classification of the beverage base "Fanta Orange OR-154 Part 2" (which is used in the manufacture of a non-alcoholic beverage) to be inserted in the Harmonized System Committee's agenda. The product at issue was described as a liquid substance, composed of natural flavours, concentrated fruit juice, citric acid, ascorbic acid, sodium benzoate, beta carotene and locust bean gum (extract).
2. It was further indicated that the General Customs Directorate of Romania had classified the product in heading 21.06 (subheading 2106.90), whereas the importing company considered heading 33.02 to be the appropriate one. The classification rationale used by the General Customs Directorate was that the mixture did not have the character of an odoriferous substance, as provided for in the first paragraph of the Explanatory Note to heading 33.02, on page 618.
3. In its letter of 23 November 2001, the Secretariat requested further information from the Romanian Customs Administration, in particular with respect to :
 - (i) The nature and the composition (percentages) of the "natural flavours" and the odoriferous substances;
 - (ii) The nature of the concentrated fruit juice; and
 - (iii) The exact composition (percentages) of the whole mixture.
4. Following this request, the Romanian Customs Administration replied that, after repeated requests to the company concerned, it had not received the information requested, but that it nonetheless would like to have the classification issue included in the Harmonized System Committee's agenda.

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5. In September 2002, the Secretariat was contacted by the Confederation of International Soft Drinks Association (CISDA) with a view to clarifying the appropriate classification of beverages bases. Following a meeting on 4 September 2002 with the Secretary General of CISDA and an expert from one of its members, the Secretariat requested the information referred to in paragraph 3 above, in order to give the Harmonized System Committee the necessary information to consider the appropriate classification. On 17 September, the Secretariat received a letter from CISDA, which is reproduced in the Annex to this document.

II. SECRETARIAT COMMENTS

Product description

6. Based on the information provided by CISDA (see Annex), the product at issue could be described as follows :

Preparation consisting of odoriferous substances (approximately 2 %), citrus concentrate (46 %), citric acid (acidulant) (19 %), ascorbic acid (antioxidant) (1 %), other food additives (locust bean gum (stabiliser), sodium benzoate (preservative) and beta-carotene (colour)) (less than 1 %) and water, used in the manufacture of non-alcoholic beverages. The preparation contains all odoriferous substances necessary for the final product, i.e., an orange-flavoured soft drink.

7. The odoriferous substances are a mixture of concentrates of orange oil, terpeneless orange oil, other citrus oils and flavour compounds. The citrus concentrate is in fact orange concentrate of 65 °Brix, which also contains the extract of peel, pulp, membranes and core of oranges of 50 °Brix. According to CISDA, the main function of the citrus concentrate is that of a carrier (for further information in this respect see "**Role and composition of the citrus concentrate**" in the Annex).

Classification

8. The Secretariat considers that headings 21.06 and 33.02 merit consideration. There are no Section or Chapter Notes which would exclude the type of product at issue from one heading or the other. Since heading 21.06 is a residual heading ("Food preparations, not elsewhere specified or included") (emphasis added), it is appropriate to consider the scope of heading 33.02 first.
9. Heading 33.02 covers "Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages". Since the product at issue is apparently not further processed before it is used in the production of the final product (i.e., the beverage), the Secretariat considers that it cannot be regarded as "raw material" (emphasis added), as provided for the first part of the heading text. Consequently this part of heading 33.02 should be disregarded, leaving the second part of the heading text ("other preparations based on odoriferous substances, of a kind used for the manufacture of beverages") for consideration.

10. The Secretariat would like to clarify first that the product at issue fulfils the condition of being “of a kind used for the manufacture of beverages”, which leaves the following questions to be considered :
- (i) Is one of the ingredients to be considered an “odoriferous substance”; and if so
 - (ii) Is the preparation “based” on this (or these) odoriferous substance(s).
11. The expression “odoriferous substances” used in heading 33.02 refers only to (i) the substances of heading 33.01, (ii) odoriferous constituents isolated from those substances and (iii) synthetic aromatics (see Note 2 to Chapter 33). The preparation at issue contains concentrates of orange oils, terpeneless orange oil, other citrus oils and flavour components, as indicated in paragraph 7 above. The Secretariat agrees that the concentrates of orange oils, terpeneless orange oil and other citrus oils are substances covered by Note 2 to Chapter 33. However, it is uncertain whether the “flavour components” are also covered by that Note, since their nature is not further specified in the CISDA submission. If they are not covered by the terms of Note 2 to Chapter 33, it will be important to know the volume of these flavour components in the 2 % mixture of “odoriferous substances”. The Secretariat has requested CISDA to provide further information in this respect.
12. With respect to the term “based”, the following is stated in the Explanatory Note to heading 33.02, first paragraph, third and fourth sentences, on page 618 :
- “[Preparations based on odoriferous substances] must have a basis of one or more odoriferous substances, as described in Note 2 to this Chapter, which are used primarily to impart a fragrance and secondarily to give a flavour to beverages. Such preparations generally contain a relatively small quantity of odoriferous substances which characterise a particular beverage; they may also contain juices, colouring matter, acidulants, sweeteners, etc., provided that they retain their character of odoriferous substances.”
13. The preparation at issue is used in a quantity of 23 kg for the production of 1,600 litres of the final beverage (“Fanta Orange”). The citrus concentrate (46 % of the preparation) contributes, according to the information provided by CISDA, only about 1/100th of the total of odoriferous substances contained in the preparation. Furthermore, the function of this concentrate is to act as a stabiliser/cloudifier in the final product. Consequently, the fragrance and flavour in the final product is received from the mixture of odoriferous substances (which accounts for about 2 % of the preparation), rather than from the citrus concentrate.
14. That being the case and assuming that the flavour components contained in the 2 % mixture referred to in paragraph 7 above are covered by the wording of Note 2 to Chapter 33, the Secretariat would be inclined to classify the preparation at issue in heading 33.02 (subheading 3302.10) by application of General Interpretative Rules 1 and 6, thereby noting that the odoriferous substances in the preparation characterise the fragrance and flavour of the final beverage.
15. If, on the other hand, the Committee considers that the preparation no longer has the character of odoriferous substances due to the addition of the other ingredients and the small amount (about 2 %) of odoriferous substances, classification of the preparation in heading 21.06 (subheading 2106.90) should be considered. This classification would also be based on the application of General Interpretative Rules 1 and 6.

III. CONCLUSION

16. The Committee is invited to rule on the classification of a preparation used in the manufacture of beverages, as described in paragraphs 6 and 7 above, taking into account the information provided by CISDA in the Annex to this document and the comments of the Secretariat in paragraphs 8 to 15 above. The Committee is also invited to indicate what further action should be taken, if any.

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NOTE FROM CISDA

Thank you for your letter of September 6 in which you requested additional information about the preparation "Fanta Orange OR-154 Part 2". The Coca-Cola Company who is the producer of the preparation has provided us with the following information in order to support our suggested classification in subheading 3302.10.

Composition of the preparation

"Fanta Orange OR-154 Part 2" is a preparation based on a mixture of odoriferous substances (approximately 2 %), also containing 46 % citrus concentrate, 19 % acidulant citric acid, 1 % antioxidant ascorbic acid, less than 1 % of other food additives (stabiliser locust bean gum, preservative sodium benzoate and colour beta-carotene) and water; for the preparation of beverages.

Nature and composition of the odoriferous substances

The odoriferous substances which form the basis of the preparation under consideration are a mixture of orange oil, terpeneless orange oil, other citrus oils and flavour compounds. All these substances are either substances of heading 33.01, or odoriferous constituents isolated from those substances, and therefore comply with the definition of odoriferous substances as given in Note 2 to Chapter 33. Their concentration exceeds that of the odoriferous substances in the orange concentrate by magnitudes. The "citrus concentrate" contributes only about one-hundredth of the total amount of odoriferous substances contained in the preparation.

Role and composition of the citrus concentrate

The "citrus concentrate" is orange juice concentrate of 65 °Brix and a density of 1.3 kg/l. The preparation also contains extract of peel, pulp, membranes and core of oranges with a Brix of 50 °. The function of this ingredient is to act as a stabilizer/cloudifier in the final beverage. Sugar is not added to the citrus concentrate or to the preparation. The main function of the citrus concentrate is that of a carrier. The final product – an orange-flavoured soft drink – is flavoured with essential oils or odoriferous constituents isolated from such oils (see above). Normally, these oils are not water-soluble and therefore need a stabiliser which helps to create a stable emulsion. Thus, the finished beverage does not separate, keeps its taste and appearance qualities and can be stored over a longer period of time. Depending on the type of soft drink and food legislation in the target country, different stabilising systems can be used such as :

1. Alcohol, propylene glycol for clear beverages;
2. Orange juice and/or a combination of natural gums and other emulsifiers/stabilisers for cloudy beverages.

Fanta Orange belongs to the second category. Due to the food legislation in the countries where the final beverage is marketed, gums are either permitted only to a limited extent or a small amount of orange juice has to be present in the product, for example to allow the use of pictures of oranges on the label.

Other information

The preparation under consideration weighs approximately 23 kg and is used for the production of 1,600 litres of ready-to-drink beverage. The final beverage contains approximately 3 % orange juice, which helps to stabilise the essential oils and, as a secondary effect, gives cloudiness to the final beverage.

The preparation “Fanta Orange OR-154 Part 2” contains all odoriferous substances which give the final beverage its orange odour and taste. In the production process of the final beverage, this part and other parts which, for example, contain preservatives, are mixed with carbonated water and sugar to give the orange-flavoured soft drink.

Classification in the Harmonized System

As expressly mentioned in the text of the heading, heading 33.02 covers “other preparations based on odoriferous substances, of a kind used for the manufacture of beverages”. The scope of this wording has been last clarified by the Harmonized System Committee in its meeting of November 1997, which led to the adoption of the following amended February 1998 version of the Explanatory Notes of Heading 33.02.

“The heading also includes other preparations based on odoriferous substances, of a kind used for the manufacture of beverages. These preparations may either be alcoholic or non-alcoholic and may be used to produce either alcoholic or non-alcoholic beverages. They must have a basis of one or more odoriferous substances, as described in Note 2 to this Chapter, which are used primarily to impart a fragrance and secondarily to give a flavour to beverages. Such preparations generally contain a relatively small quantity of odoriferous substances which characterise a particular beverage; they may also contain juices, colouring matter, acidulants, sweeteners, etc., provided that they retain their character of odoriferous substances. As presented, these preparations are not intended for consumption of beverages and thus can be distinguished from the beverages of Chapter 22.”

The Harmonized System Committee found it necessary to clarify that a preparation containing fruit juice, could still be based on odoriferous substances, as described in Note 2 to Chapter 33, even where such substances are only present in relatively small quantities. Also other ingredients such as colours or acidulants can be present.

In view of the foregoing, it must be examined whether the presence of approximately 2 % of odoriferous substances, complying with Note 2 to Chapter 33, in the preparation is sufficient to consider that the preparation is “based on odoriferous substances”. According to the above-quoted Note, a preparation is based on odoriferous substances where these substances impart a fragrance and give a flavour “which characterise a particular beverage”.

In other words, “Fanta Orange OR-154 Part 2” will be a preparation based on odoriferous substances of Heading 33.02 where these substances, rather than the citrus concentrate, determine the typical fragrance and flavour of the beverage. To determine whether this is the case, a factual analysis is necessary.

The production of 1,600 litres of final beverage requires approximately 23 kilograms of the preparation. In other words, the orange flavour and fragrance of the final beverage is imparted by a part representing in volume slightly more than 1 % of the total beverage. Of this 1 %, the citrus concentrate represents less than half. It is self-evident that a citrus concentrate in such minimal proportion cannot impart an orange flavour and fragrance to the final beverage.

On the contrary, odoriferous substances have precisely as a characteristic that they are able to impart fragrance or flavour even when added in very small doses.

It is consequently factually impossible that the characteristic orange flavour and fragrance of the final beverage would be imparted by any ingredient other than the odoriferous substances contained in the preparation "Fanta Orange OR-154 Part 2".

The foregoing is confirmed by an analysis of the role of the citrus concentrate in the preparation (see above). Indeed, such concentrates are frequently used as a diluent, a carrier or to emulsify odoriferous substances such as essential oils in beverage base preparations. Its presence increases the stability of the preparation and is, therefore, ancillary to the function of the other ingredients contained in the preparation.

Conclusion

The odoriferous substances contained in the preparation "Fanta Orange OR-154 Part 2" and which fully comply with Note 2 to Chapter 33 impart the flavour and fragrance which characterise the final beverage. This preparation is consequently "based on odoriferous substances".

Heading 33.02 expressly includes in its scope "other preparations based on odoriferous substances, for the manufacture of beverages".

It follows from General Rule 1 – which says that "[...] for legal purposes, classification shall be determined according to the terms of the headings and any relative section or Chapter Notes [...]" – that the preparation "Fanta Orange OR-154 Part 2", as a preparation "based on odoriferous substances", can only be classified under heading 33.02.

With regards to the samples of the said preparation, the manufacturer will contact you directly. We are at your disposal if you need further information.
