



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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NC0718E1

O. Eng.

Brussels, 17 April 2003.

CLASSIFICATION OF A "FANTA" BEVERAGE BASE

(Item VIII.6 on Agenda)

Reference documents :

NC0636E1 (HSC/30)
NC0647E1 (HSC/30)

NC0655E2, Annex H/22 (HSC/30 - Report)

I. BACKGROUND

1. At its 30th Session, the Committee decided to postpone the discussion on the classification of a **Fanta** beverage base to its next session.
2. On 25 March 2003, the Secretariat received a note from the **US** Administration containing information vis-à-vis the classification of the **Fanta** beverage base at issue. The note is reproduced below.

II. NOTE FROM THE UNITED STATES

"Introduction

3. At its 31st Session, the Harmonized System Committee will consider the classification of a beverage base known as the "**Fanta Orange OR-154 Part 2**" which is used in the manufacture of a non-alcoholic beverage (i.e., **Fanta** soft drink).
4. In Doc. NC0636E1, the Secretariat, after a careful and thoughtful examination, indicates that it would be inclined to classify the preparation in heading 33.02 (and specifically in subheading 3302.10).
5. For the reasons set forth below, the **United States** agrees with the Secretariat that the "**Fanta Orange OR-154 Part 2**" preparation is properly classified in heading 33.02 as a preparation based on odoriferous substances used for the manufacture of beverages.

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

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Discussion

6. Heading 33.02 provides as follows :

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.

7. Preparations based on odoriferous substances and of a kind used in the manufacture of beverages are specifically provided for and classified in heading 33.02. In the instant case, the “Fanta Orange OR-154 Part 2” preparation is a preparation based on odoriferous substances that is of a kind used for the manufacture of a beverage (i.e., Fanta soft drink).

8. Note 2 to Chapter 33 provides as follows :

The expression “odoriferous substances” in heading 33.02 refers only to the substances of heading 33.01, to odoriferous constituents isolated from those substances or to synthetic aromatics.

9. In the instant case, as indicated in comments from the Confederation of International Soft Drinks Association, the odoriferous substances that form the basis of the “Fanta Orange OR-154 Part 2” are a mixture of orange oil, terpeneless orange oil, other citrus oils and flavor compounds (composed of aldehydes and esters). Each satisfies Note 2 to Chapter 33.

10. The Explanatory Notes to heading 33.02 provide, in pertinent part, as follows :

This heading covers the following mixtures **provided** they are of a kind used as raw materials in the perfumery, food or drink industries (e.g., in confectionery, food or drink flavourings) or in other industries (e.g., soap-making) :

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(6) Mixtures of one or more odoriferous substances (essential oils, resinoids, extracted oleoresins or synthetic aromatics) combined with added diluents or carriers such as vegetable oil, dextrose or starch.

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The heading also includes **other preparations based on odoriferous substances, of a kind used for the manufacture of beverages.** (Emphasis in original.) These preparations may be either 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 characterize a particular beverage; they may also contain juices, colouring matter, acidulants, sweeteners, etc., provided that they retain their character of odoriferous substances.** (Emphasis added.) As presented, these preparations are not intended for consumption as beverages and thus can be distinguished from the beverages of Chapter 22.

11. The Explanatory Note to heading 33.02 clearly indicates that the preparations based on odoriferous substances for use in the manufacture of beverages classifiable in that heading (1) generally contain a relatively small quantity of odoriferous substances and (2) may contain, among other ingredients, juices.
12. In the case of the “Fanta Orange OR-154 Part 2” preparation, the odoriferous substances impart the fragrance and flavor to the final beverage. The fragrance and flavor are the essence of a beverage. In contrast, the citrus concentrate found in the preparation functions as a carrier and as a stabilizer/cloudifier in the final beverage. In fact, depending on the type of soft drink and food legislation in a particular country, natural gums rather than orange juice can be used as carriers and stabilizers to produce the Fanta Orange soft drink.
13. As indicated in the Explanatory Notes, preparations of heading 33.02 may contain other ingredients - such as juices - as long as the preparations retain their character of odoriferous substances. The “Fanta Orange OR-154 Part 2” preparation contains ingredients other than odoriferous substances but retains its character of odoriferous substances.

Conclusion

14. In light of the above, the United States believes that the “Fanta Orange OR-154 Part 2” preparation is properly classified in heading 33.02 (and specifically in subheading 3302.10) as a preparation based on odoriferous substances used for the manufacture of beverages.”

III. SECRETARIAT COMMENTS

15. The Secretariat would first like to draw the Committee’s attention to the product description in paragraph 6 of Doc. NC0636E1 (HSC/30), as well as to its comments in paragraphs 8 to 15 of the same document. The 2 % odoriferous substance is a mixture of (i) concentrates of orange oil, (ii) terpeneless orange oil, (iii) other citrus oils and (iv) flavour compounds, the latter being composed of aldehydes and esters and amounting to approximately 10 % of the odoriferous substance (see Doc. NC0647E1, paragraph 2).
16. The US Administration has concluded (see paragraph 7 above) that the preparation at issue is (i) based on odoriferous substances and (ii) of a kind used for the manufacture of a beverage. Consequently, it suggests classifying the preparation in heading 33.02 (subheading 3302.10).
17. In paragraphs 14 and 15 of Doc. NC0636E1, the Secretariat has indicated that it 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. 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 the preparation) 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.

IV. CONCLUSION

18. The Committee is invited to take into account the comments presented by the **United States** in paragraphs 3 to 14 above and the comments of the Secretariat in paragraphs 15 to 17 above, when considering this agenda item.
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