



HARMONIZED SYSTEM  
COMMITTEE

-  
32<sup>nd</sup> Session

NC0773E1  
(+ Annex)

O. Eng.

Brussels, 15 October 2003.

POSSIBLE AMENDMENT OF NOTE 3 TO CHAPTER 19

(PROPOSAL BY THE CZECH ADMINISTRATION)

(Item VII.3 on Agenda)

I. BACKGROUND

1. On 7 September 2001, 11 April and 26 August 2002, respectively, the Secretariat received enquiries from the Customs Administration of the Czech Republic concerning the classification of certain products prepared from puffed rice grains which had been subjected to pressure in a moist, heated chamber. Sudden removal of the pressure and ejection into a cold atmosphere caused the grains to expand to several times their original volume. After manufacture, some of these products are completely or partially covered with chocolate.
2. In its letters of 18 October 2001, 28 January 2002 and 18 September 2002, respectively, the Secretariat took the view that these products should be classified in heading 19.04 (as "prepared foods obtained by swelling or roasting of cereals or cereal products (for example, corn flakes)" when they were presented without chocolate, and in heading 18.06 when they were completely covered with chocolate – in accordance with Note 3 to Chapter 19 which excludes preparations which are covered with chocolate from heading 19.04. As to products partially covered with chocolate, the Secretariat took the view that such products could be classified in heading 18.06 when the chocolate covered at least 50 % of a product's total surface, or containing more than 6 % by weight of cocoa calculated on a totally defatted basis (first part of Note 3 to Chapter 19). At a later stage it appeared that the Czech Administration had a classification dispute with another Customs Administration concerning products partially covered with chocolate. Consequently, the Secretariat did not express a final view as to the classification of such products. Relevant parts of the Secretariat's replies are reproduced in the Annex to this document.
3. On 21 July 2003, the Secretariat received a follow-up note from the Czech Administration. It appears that the Czech Administration is of the opinion that the expression "coated with chocolate" in Note 3 to Chapter 19 should include products which are covered at "any part of surface". The Czech Administration was also of the opinion that the English and

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French texts of Note 3 to Chapter 19 were possibly misaligned. It therefore proposed that the question be submitted to the Harmonized System Committee for examination. The **Czech** Administration's latest note is reproduced below :

## II. NOTE FROM THE **CZECH** ADMINISTRATION

4. "Thank you for your last reply concerning the HS classification of an assortment of food preparations made from cereals.
5. In your above referenced letter and in letter Ref. No. 01 NL0941-GI/Fl you have expressed your views as to the classification of several samples of these products. In letter Ref. No. 01 NL0941-GI/Fl we have also obtained your opinion on the expression "coated with chocolate or other food preparations containing cocoa" in Note 3 to Chapter 19. You are of the view that this expression, in accordance with standard classification principles in the HS Nomenclature with regard to mixtures and combinations of materials (GIRs 2 (a) and 3 (b)), only applies to products where the chocolate or other food preparation containing cocoa covers at least 50 % of a product's total surface.
6. As regards to your explanation of Note 3 to Chapter 19, we have expressed our opinion in the letter of March 2002, Ref. No. 42044/01-32 (12278/02-32). The **Czech** Administration is not convinced that the expression "coated with chocolate or other food preparations containing cocoa" is possible to explain by means of GIR 3 (b). We suppose that from a practical point of view, it is very difficult and in some cases impossible, to ascertain, if the chocolate or other food preparation containing cocoa covers at least 50 % of a product's total surface. There are various shapes of extruded products on the market (e.g., different figurines), which are only decorated (e.g., with wide stripes), sprayed or coloured with chocolate or icing containing cocoa, and it is very difficult to measure the area of these products. Another question is, how to proceed the cases, when icing soaks into the middle or bottom part of a product.
7. Therefore the **Czech** Republic is of the opinion that the expression "coated with chocolate or other food preparations containing cocoa" in Note 3 to Chapter 19 should be explained so that a product can be coated of any part of the surface (e.g., only on the lower or upper side, half or whole area, or in some other way). This opinion is based on the fact, that it is not possible to limit the meaning of Note 3 to Chapter 19 of the Harmonized System.
8. The **Czech** Administration was also informed about the view of **Dutch** Customs Administration of this problem. The **Dutch** Administration is of the opinion that the expression "coated with chocolate or other food preparations containing cocoa" in Note 3 to Chapter 19 is to be interpreted in a way that a product should be surrounded (in other words: completely covered) with chocolate or other food preparations containing cocoa. In our opinion this view is not also absolutely correct, because this explanation would lead to exclusion of products, which are almost completely coated, from heading 18.06.
9. It has followed from the correspondence and negotiations between WCO, the **Czech** Customs Administration, the **Dutch** Customs Administration and the **EC**, that the different interpretations of Note 3 to Chapter 19 stem from the possible misalignment between the English and French versions of the Harmonized System.

10. According to the English version of the Note 3 to Chapter 19 : "*Heading 19.04 does not cover preparations containing more than 6 % by weight of cocoa calculated on a totally defatted basis or **coated** with chocolate or other food preparations containing cocoa of heading 18.06 (heading 18.06).*"
11. According to the French version of Note 3 to Chapter 19 : "*Le n° 19.04 ne couvre pas les préparations contenant plus de 6 % en poids de cacao calculés sur une base entièrement dégraissée ou **enrobées** de chocolat ou d'autres préparations alimentaires contenant du cacao du n° 18.06 (n° 18.06).*"
12. It appeared that the English and French versions of the expression at issue were not aligned; while the French version seemed to suggest that a product shall be completely covered by chocolate or other food preparations containing cocoa, the English version could be taken to mean that it would suffice if only, for example, one side was coated with chocolate or other food preparations containing cocoa.
13. The **Czech** Administration proposes that it would be very useful to find a uniform explanation of the term "**coated**"/"**enrobées**". This explanation would be helpful to mention in the Explanatory Notes to the Harmonized System to Chapter 19, for example in accord with the opinion of the **Czech** Republic stated above. In order to find a solution, let me ask you to refer the question to the Harmonized System Committee."

### III. SECRETARIAT COMMENTS

14. According to the **Czech** Administration, in the English version of Note 3 to Chapter 19, the expression "coated" could be interpreted to include a product where only one side is covered by chocolate. On the other hand, the French expression "enrobées" could, in the view of the **Czech** Administration, not cover this product since this expression only includes products which are completely covered with chocolate.
15. The **Czech** Administration therefore proposes that the coverage of these expressions should be clarified in the Explanatory Notes, e.g., in accordance with the **Czech** Administration's interpretation above.
16. Since the interpretation of these expressions ("coated"/"enrobées") seems to be the subject of a dispute between two Contracting Parties, the Secretariat will not express its view as to the interpretation of these expressions.
17. However, to assist the Committee, the Secretariat can inform the Committee that the words "coat" and "enrober" have the following dictionary definitions. According to "The Concise Oxford Dictionary", "coat" means "*provide with or form a layer or covering*", while, according to "Petit Robert", "enrober" means "*entourer (une marchandise, un produit) d'une enveloppe ou d'une couche protectrice*" ("*surround a good product*) with a protective envelope or layer)". In the Secretariat's view it appears that the two expressions at issue are not completely aligned, but whether the term "coated"/"enrobées" in Note 3 to Chapter 19 is meant only to cover products completely (100 %) coated, or not, is in the Secretariat's view, not clear. Nonetheless, the decision as to whether amendments are required, either in the legal texts or in the Explanatory Notes is up to the Committee to decide.

IV. CONCLUSION

18. The Committee is invited to examine whether the English expression “coated” and the French expression “enrobées” in Note 3 to Chapter 19 are aligned.
19. The Committee is also invited to instruct the Secretariat as to what further action should be taken in this regard.

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SECRETARIAT REPLIES TO THE CZECH ADMINISTRATION

(Letter of 18 October 2001)

“Thank you for your above referenced letter concerning the Harmonized System (HS) classification of an assortment of food preparations made from cereals referred to as **PUFÍK**, **PUFÍK v čokoládové polevě**, **RACIOLKY čokoládové**, **Celozrnné chlebičky s mléčnou čokoládovou polevou**, **Perličky ovocné** and **ČOKOBROKY**”.

**PUFÍK**

Description

According to the information and illustration provided by your administration, this product is prepared from puffed rice grains which have been subjected to pressure in a moist, heated chamber. Sudden removal of the pressure and ejection into a cold atmosphere cause the grains to expand to several times their original volume. This product is presented as round pieces with a diameter of approximately 6 cm and a thickness of approximately 1 cm.

Classification

Your administration is of the opinion that this product should be classified in heading 19.04 (subheading 1904.10) (“prepared foods obtained by the swelling or roasting of cereals or cereal products”).

We agree that heading 19.04 merits consideration.

The Secretariat is of the opinion that the process of pressing puffed rice grains into round pieces does not deprive them of the essential character of prepared foods obtained by the swelling or roasting of cereals or cereal products, even though the products of subheading 1904.10 are mainly “used, with or without milk, as breakfast foods” (see the Explanatory Note to heading 19.04 (page 149)). Accordingly, the Secretariat is of the view that **PUFÍK** should be classified in heading 19.04 (subheading 1904.10).

**PUFÍK v čokoládové polevě**

Description

According to your administration, this product is manufactured by the same process as **PUFÍK** referred to above. However, this product is completely covered with chocolate.

Classification

Your administration is of the opinion that this product should be classified in heading 18.06 (“Chocolate and other food preparations containing cocoa”).

We agree that heading 18.06 merits consideration (heading 19.04 being the alternative).

According to Note 3 to Chapter 19, "heading 19.04 does not cover preparations containing more than 6% by weight of cocoa calculated on a totally defatted basis or coated with chocolate or other food preparations containing cocoa of heading 18.06 (heading 18.06).

The Secretariat therefore agrees with your administration that **PUFIK v okoládové poleve** should be classified in heading 18.06 (subheading 1806.90).

**RACIOLKY okoládové** and **Celozrnné chlebičky s mléanou okoládovou polevou**

#### Description

According to your administration, these products are manufactured by the same process as **PUFIK** referred to above. However, these products are only partially covered with chocolate.

#### Classification

Your administration is of the opinion that these products also should be classified in heading 18.06.

We agree that heading 18.06 merits consideration (heading 19.04 being the alternative).

Your administration has not provided any information as to the cocoa content in these products. It is therefore not clear whether they contain more than 6% by weight of cocoa calculated on a totally defatted basis (see Note 3 to Chapter 19 referred to above). However, based on the assumption that this is the case, the Secretariat takes the view that these products should also be classified in heading 18.06 (subheading 1806.90).

With regard to the expression "coated with chocolate" in Note 3 to Chapter 19, the Secretariat is of the view that this expression, in accordance with the standard classification principles in the HS Nomenclature with regard to mixtures and combinations of materials (GIRs 2 (a) and 3 (b)), only applies to products where the chocolate covers at least 50% of a product's total surface."

(Letter of 28 January 2002)

"This is with reference to our letter of 18 October 2001 (01NL0941 - GI/FI) regarding the classification of several food preparations, including **RACIOLKY okoládové**".

In our advice to your administration with regard to the classification of **RACIOLKY okoládové** (a product prepared from puffed rice grains partially covered by chocolate), we assumed that this product contained more than 6% by weight of cocoa calculated on a totally defatted basis (see Note 3 to Chapter 19). Based on this assumption, the Secretariat took the view that this product should be classified in heading 18.06 (subheading 1806.90).

However, the Secretariat has recently received a letter from the **Dutch** Customs Administration informing us that this product contains less than 6% cocoa. It therefore appears that the above assumption with regard to cocoa content was not correct. According

to the illustration provided earlier it is also quite clear that the chocolate covers less than 50% of the total surface of the product at issue.

Consequently, the Secretariat now takes the view that "RACIOLKY čokoládové" containing less than 6% cocoa should be classified in subheading 1904.10.

Your administration is kindly asked to take note of this information."

(Letter of 18 September 2002)

"I acknowledge receipt of your above referenced follow-up letter concerning the Harmonized System (HS) classification of an assortment of food preparations made from cereals.

In your letter you have clarified that your classification dispute with another Customs Administration only relates to the product referred to as "RACIOLKY čokoládové". Consequently, you still would like to have the Secretariat's view on the classification of the other seven products referred to in your previous letter ((42044/01-32) 12278/02-32).

**Smydlík**

#### Description

According to the information and sample provided by your administration, this product, about 5 mm in diameter, is prepared from extruded cereals (wheat, rice) covered entirely with chocolate. The product is put up in a bag of plastics of a net weight of 80 grams. It can be eaten together with milk, yoghurt, etc., or on its own.

#### Classification

Your administration is of the view that this product should be classified in heading 18.06 ("Chocolate and other food preparations containing cocoa") by virtue of Note 3 to Chapter 19.

The Secretariat agrees that heading 18.06 merits consideration (in addition to heading 19.04).

According to Note 1 to Chapter 18, this Chapter does not cover preparations of heading 19.04. However, as pointed out by your administration, according to Note 3 to Chapter 19, heading 19.04 does not cover preparations covered with chocolate. Accordingly, the Secretariat agrees with your administration that "Smydlík" should be classified in heading 18.06 (subheading 1806.90)."

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