



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM
COMMITTEE

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24th Session

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(+ Annex)

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H3-1

Brussels, August 1999.

STUDY CONCERNING POSSIBLE AMENDMENTS TO THE NOMENCLATURE
AND/OR THE EXPLANATORY NOTES TO CLARIFY THE CLASSIFICATION
OF CERTAIN CRISPS IN HEADING 19.05

(Item VII.9 on Agenda)

Reference documents :

42.066 (HSC/21)
42.114 (HSC/21)
42.100, Annex IJ/21 (HSC/21 - Report)
42.501 (HSC/22)
42.503 (HSC/22)
42.750, Annex H/2 (HSC/22 - Report)
NC0105E1, (HSC/24)

I. BACKGROUND

1. At its 22nd Session (November 1998), the Harmonized System Committee examined the classification of certain crisps ("POM-BÄR" – Potato Snacks" and "Peppies" Bacon Flavoured Wheat Snacks").
2. The Delegate of Poland informed the Committee that her Administration had raised this classification issue, because the classification of crisps containing potato flour was not clear. By application of Note 3 to Chapter 20 and GIR 3 (b), the Polish Administration would classify "POM-BÄR" in heading 20.05, since it was based on potato flour, and "Peppies" in heading 19.05, because it contained 55 % wheat flour.
3. The Delegate of the United States stated that Note 2 to Chapter 19 applied only to products of heading 19.01, i.e., preparations such as doughs. It was a specific provision, which did not control other headings of Chapter 19 and, in support thereof, he cited the example of "gnocchi", a potato-dough-based product, classified in heading 19.02. In his view, cooked products made from doughs were bakers' wares to be classified in heading 19.05. He acknowledged that heading 20.05 could also apply to the potato-based product ("POM-BÄR"), but, by application of GIR 3 (a), the baked snack food was more

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specifically described as bakers' wares in heading 19.05. With regard to the application of Note 3 to Chapter 20, he noted that it merely restricted the products to be classified, for example, in heading 20.05 and did not indicate that all products of the materials listed therein were to be classified in that heading. Consequently, he would classify both products in heading 19.05.

4. The Delegate of the EC agreed that the products at issue could be classified in heading 19.05, which had a wide scope. According to the Explanatory Note to heading 19.05, this heading did not only cover products made from cereal flour, but also products made of other flours classified in Chapter 11. A classification based on predominant constituent by weight, could be an inadequate or arbitrary criterion not mentioned in the legal texts. He also agreed with the Delegate of the United States that Note 3 to Chapter 20 limited the scope of heading 20.05, rather than providing for classification of all potato-based products in that heading and that Note 2 to Chapter 19 was not relevant. He agreed that both products should be classified in heading 19.05 by application of GIR 3 (a).
5. The Delegate of Switzerland concurred with the Secretariat's view in paragraph 27 of Doc. 42.503 that crisps made basically from potato flour were classifiable in heading 20.05, whereas those made from a dough based on cereal flour, i.e., flour of the milling industry, should be classified in heading 19.05. He also noted that Note 3 to Chapter 20 had a binding character. Consequently, "POM-BÄR", which apparently was based on potato flour, should be classified in heading 20.05, while the cereal-based "Peppies" should be classified in heading 19.05. In support of this view, he also referred to definitions in technical literature, which indicated that bakers' wares were based on products from the milling industry.
6. After further discussion, the Committee first decided, by 12 votes to 6, to classify "POM-BÄR" in heading 19.05, rather than in heading 20.05, by application of GIR 1. It then decided, by 20 votes, to classify "Peppies" in heading 19.05 rather than in heading 20.05 (no votes) or heading 19.01 (1 vote).
7. To reflect these decisions the Secretariat was instructed to prepare draft Classification Opinions. (Following the decision taken by the Harmonized System Committee at its 22nd session to classify "POM-BÄR – Potato Snacks" in heading 19.05, the Swiss Administration entered a reservation against the decision. The Swiss Administration subsequently withdrew its reservation, and the Committee decided at its 23rd Session that the decision taken at its 22nd Session to classify "POM-BÄR – Potato Snacks" in heading 19.05 should be taken as deemed approved by the Council. See paragraphs 14 to 17 to Doc. NC0090E2 (HSC/23/May 99)).
8. With regard to possible future amendments of the Explanatory Notes or the legal texts to clarify the classification of such products (including sliced and fried potatoes), the Committee asked the Secretariat to carry out a study and prepare a proposal for consideration at a future session.
9. On 15 July 1999, the Secretariat received the following Note from the US Administration containing proposals to amend the Explanatory Notes to headings 19.05 and 20.05 in respect of the above-mentioned decisions.

II. U.S. NOTE ON POSSIBLE AMENDMENTS TO THE EXPLANATORY NOTES
ARISING FROM THE CLASSIFICATION OF CERTAIN CRISPS

10. “At its 22nd Session, the Harmonized System Committee decided to classify certain crisps or food products known as “Peppies Bacon Flavoured Wheat Snacks” and “POM-BÄR Potato Snacks” in Harmonized System heading 19.05 as bakers’ wares. In order to prevent any confusion on the classification of such food products in the future, the United States believes that the Explanatory Notes should be amended to reflect the classification decisions for those two products. Accordingly, the United States submits for consideration by the Committee at its 24th Session the following proposed amendments to the Explanatory Notes:

Page 151. Heading 19.05. Item (A). First paragraph.

Delete and substitute:

“This heading covers all bakers’ wares. Bakers’ wares are generally made from a batter or dough which is baked or fried. The most common ingredients of such wares are cereal flours, potato flours, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery “improvers,” etc. Bakery “improvers” serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities.”

Page 152. Heading 19.05. Item (A) (15).

Delete and substitute:

“(15) Crisp savoury food products, for example, those made from a dough based on wheat flour, potato flour or maize (corn) meal, with the addition of salt or other flavouring (e.g., cheese, bacon, chilli, paprika, pepper, etc.), baked or fried in oil and ready for consumption. These products, which are often referred to as “crisps,” “chips” or “snacks,” may be in a variety of shapes and textures but are generally in the form of round, oval, square or rectangular pieces, whether or not crinkled.”

Page 152. Heading 19.05. Item (A).

Add the following new exclusion :

“Crisp savoury food products made from whole vegetables or pieces of vegetables (including potatoes) that are thinly sliced and baked or fried are excluded (Chapter 20).”

Page 158. Heading 20.05. New Item (5).

Add the following new item (5) :

“(5) Products in the form of thinly sliced potatoes or other vegetables which may contain added salt or flavouring, baked or fried in oil. These products, which are often referred to as "crisps," "chips" or "snacks," are generally in the form of round or oval slices or pieces, whether or not crinkled.”

Page 158. Heading 20.05. New Item (c).

Add the following new exclusion (c) :

“(c) Crisp savoury food products made from potato or other vegetable flour, whether or not mixed with other ingredients, formed into a dough and baked or fried in oil (heading 19.05).”

III. SECRETARIAT COMMENTS

11. The Secretariat is aware that the classification of "crisps", "chips" or "snacks", made from cereals or potatoes, is often subject to dispute, since the existing texts are not clear. It is therefore in agreement with the US Administration that the Explanatory Notes should be amended to reflect the classification decisions for those products. The Secretariat believes that the new Classification Opinions and the proposed amendments to the Explanatory Notes will provide sufficient guidance as to the classification of such products. Legal amendments should therefore not be necessary. However, if the Committee is of another opinion, the Secretariat is prepared to make a proposal for consideration during the next review cycle.
12. The Secretariat appreciates the US Administration's attempt to amend the Explanatory Notes. The US proposal seems to be a good basis for these amendments. With respect to the proposed texts, the Secretariat offers the following comments.

Heading 19.05.

13. In item (A), first paragraph, the US Administration has proposed to add a new second sentence ("Bakers' wares are generally made from a batter or dough which is baked or fried."). In addition a reference to "potato flours" has been added in the second sentence. Acknowledging the fact that one delegation was of the view that deep-fried products did not comply with the definition of bakers' wares, the Secretariat supports the idea of adding a reference to "fried". Moreover, since heading 19.05 covers products made from a batter (e.g., waffles and pancakes), a reference to "batter" seems justified.
14. The Secretariat is of the opinion that the wording of heading 11.05 (subheading 1105.10) properly reflects the potato products being used for the manufacture of bakers' wares and therefore proposes to use the expression "flour, meal and powder of potatoes" instead of "potato flour". The same comment applies to item (A) (15).
15. Based on the composition of "POM-BÄR" and "Peppies", the Secretariat is of the opinion that a reference to potato starch should be included in item (A) (15), in addition to

“wheat flour, potato flour” (see comment in paragraph 14), as proposed by the US Administration.

16. The Secretariat also proposes to slightly amend the last sentence of the US proposal in order to include some other forms. The last sentence of item (A) (15) should therefore read : “These products, which are often referred to as “crisps”, “chips” or “snacks”, are generally in the form of round, oval, square or rectangular flakes or pieces, whether or not crinkled, or they may be shaped as rings, spirals, sticks, wheels, animals, etc.”
17. The US Administration proposes to add a new exclusion to item (A) to reflect that such products are classified in Chapter 20 when produced from thinly sliced vegetables. The Secretariat agrees to insert such an exclusion, but believes that the reference to “Chapter 20” should be substituted by “heading 20.05”. Furthermore it is proposed to redraft the present exclusion and the proposed new exclusion as (a) and (b).

Heading 20.05.

18. The Secretariat agrees in principle with the US proposal to insert a new item (5). As these products have a composition quite different from the products of item (4), the Secretariat is also of the opinion that such products should be specifically mentioned. However, the Secretariat prefers to insert an exclusion in present item (4), instead of the proposed new exclusion (c), since these products are covered by this item before the frying process. It is also proposed to insert a sentence in new item (5) indicating that these products are ready for immediate consumption.

IV. CONCLUSION

19. The Committee is invited to approve the draft amendments to the Explanatory Notes to Chapter 19 and Chapter 20, as set out in the Annex hereto, based on the US proposals in paragraph 10 and the Secretariat’s observations in paragraphs 11 to 18 above.

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Annexe au Doc. NC0128B1
Annex to
(CSH/24/oct 99)
(HSC/24/Oct 99)

ANNEXE

MODIFICATIONS DES NOTES EXPLICATIVES EN VUE DE PRECISER

LE CLASSEMENT DANS LE N° 19.05 DE CERTAINS PRODUITS

ALIMENTAIRES CROUSTILLANTS NON SUCRES

(Point VII.9 de l'ordre du jour)

ANNEX

AMENDMENTS TO THE EXPLANATORY NOTES TO CLARIFY THE CLASSIFICATION

OF CERTAIN CRISPS IN HEADING 19.05

(Item VII.9 on Agenda)

Annexe au doc. NC0128B1
(CSH/24/oct 99)

A EFFECTUER PAR VOIE DE CORRIGENDUM
PROJET DE MODIFICATION DES NOTES EXPLICATIVES

(To be translated)

DRAFT AMENDMENTS TO THE EXPLANATORY NOTES
TO BE MADE BY CORRIGENDUM

CHAPTER 19.

Page 151. Heading 19.05. General. First paragraph.

Delete and substitute :

“This heading covers all bakers’ wares. Bakers’ wares are generally made from a batter or dough which is baked or fried. The most common ingredients of such wares are cereal flours, flour, meal and powder of potatoes, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery “improvers,” etc. Bakery “improvers” serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities.”

Page 152. Heading 19.05.

1. Item (A) (15). Delete and substitute:

“(15) **Crisp savoury food products**, for example, those made from a dough based on wheat flour, flour, meal and powder of potatoes (with or without starch, including potato starch), flour or maize (corn) meal, with the addition of salt or other flavouring (e.g., cheese, bacon, chilli, paprika, pepper, etc.), baked or fried in oil and ready for consumption. These products, which are often referred to as “crisps”, “chips” or “snacks”, are generally in the form of round, oval, square or rectangular flakes or pieces, whether or not crinkled, or they may be shaped as rings, spirals, sticks, wheels, animals, etc.”

2. Exclusion. Delete and substitute :

“The heading **excludes** :

- a. Products containing more than 20 % by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (e.g., pies consisting of meat enclosed in pastry) (**Chapter 16**).
- b. Crisp savoury food products made from whole vegetables or pieces of vegetables (including potatoes) that are thinly sliced and baked or fried (**heading 20.05**).”

CHAPTER 20.

Page 158. Heading 20.05. Item (4).

Delete and substitute :

- “(4) **Products in the form of thin rectangular tablets made from potato flour**, salt and small quantities of sodium glutamate, and partly dextrinised by successive humidification and dessication. These products are intended for consumption as “chips” after deep frying for a few seconds. However, when ready for consumption, after the deep frying process, such products are classified in **heading 19.05**.
- (5) **Products in the form of thinly sliced potatoes or other vegetables**, which may contain added salt or flavouring, baked or fried in oil. These products, which are often referred to as "crisps," "chips" or "snacks," are generally in the form of round or oval slices or pieces, whether or not crinkled. They are ready for immediate consumption.”
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