



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

NR0111E1

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22<sup>nd</sup> Session  
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O. Eng.

Brussels, 1 August 2000.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE  
REGARDING THE CLASSIFICATION OF SAUCES

(Item III.B.1 on Agenda)

Reference documents :

41.320 (HSC/20 and HSC/21)	NC0123E1 (HSC/24)
42.092 (HSC/21)	NC0160B1, Annex G/4 (HSC/24 – Report)
42.100, Annex IJ/2 (HSC/21 - Report)	NC0185E1 (HSC/25)
42.441 (HSC/22)	NC0208E1 (HSC/25)
42.750, Annex G/15 (HSC/22 - Report)	NC0250E2, Annexes G/3 and H/11 (HSC/25 – Report)

I. BACKGROUND

1. At its 22<sup>nd</sup> Session (November 1998), the Harmonized System Committee examined the classification of "CHICKEN TONIGHT" – "Oriental Sweet and Sour Sauce", containing visible pieces (1 to 2 cm in length and 0.5 to 1 cm in width) of vegetables (about 26 % : red peppers, onion, carrots and green peppers) and fruit (about 7 % : pineapple), sugar, vinegar, tomato purée, modified starch, white wine, salt, herbs and spices (including garlic and ginger), stabiliser (xanthan gum), soy sauce and water. The Committee decided, by 18 votes to 9, to classify the product in heading 21.03 (subheading 2103.90), by application of General Interpretative Rule 1.
2. At its 24<sup>th</sup> Session (October 1999), following a reservation entered by the Norwegian Administration, the HS Committee re-examined the classification of "CHICKEN TONIGHT" - "Oriental Sweet and Sour Sauce" and reconfirmed by 15 votes to 14 the classification of the product in subheading 2103.90.
3. To reflect the Committee's decision, the Secretariat was instructed to prepare a Classification Opinion for examination by the next pre-session Working Party and draft amendments to the Explanatory Notes for examination by the next session of the HS Committee. It was also decided that during the next revision of the Harmonized System, the Secretariat should prepare draft amendments to the legal texts to be examined by the

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Review Sub-Committee. In drafting these amendments the Secretariat could take into consideration the definition of sauces applied by the EC in its Combined Nomenclature and any other proposals to be submitted to the Secretariat by interested Contracting Parties.

4. At its 25<sup>th</sup> Session (March 2000), the HS Committee adopted a Classification Opinion with regard to the product in question. At the same time, it examined draft amendments to the Explanatory Notes to headings 20.01 and 21.03 based on a proposal from the Secretariat and a proposal submitted during the meeting by the Norwegian Delegation.
5. Referring to his proposal to introduce quantitative criteria in the Explanatory Note to heading 21.03 (which was the proposal set out in item (b) of paragraph 32 of Doc. NC0123E1), the Norwegian Delegate explained that the proposal was intended to lay down an objective criterion to distinguish sauces of heading 21.03 from products of Chapter 20. The Secretariat's proposal would make the scope of heading 21.03 too broad and a number of products currently falling in heading 20.01 or 20.05 would be transferred to heading 21.03.
6. Supporting the views expressed by the Norwegian Delegate, the EC Delegate indicated that the texts proposed by the Secretariat should be reviewed. He was of the view that the current quantitative reference to "very little solid matter" in the Explanatory Notes should not be replaced by quantitative criteria but by guidelines in respect of the volume of fruit or vegetables usually contained in sauces. In this regard, he recalled the Committee's instruction at the last session that the Secretariat could take into consideration the definition of sauces applied by the EC in its Combined Nomenclature and any other proposals to be submitted by interested Contracting Parties. He explained that the proposed texts by the Secretariat would make it difficult to distinguish between headings 21.03 and 20.05 with regard to products consisting of sauces with vegetables and vegetables put up in a sauce, and therefore stressed that further guidance should be indicated.
7. Another delegate expressed the view that since quantitative criteria were not reflected in the legal texts it would cause legal problems if such quantitative criteria were reflected only in the Explanatory Notes. He therefore opposed having quantitative criteria and indicated that the Secretariat's draft was a good start. He was of the view that commercial realities, such as how products were marketed and how they were used, should be reflected in the Explanatory Notes rather than quantitative criteria.
8. That delegate, while agreeing to proceed on the basis of the Secretariat's draft, however, indicated that the reference to "not intended to be eaten by themselves" might cause difficulty in distinguishing certain products of headings 20.01 and 20.05 from those of heading 21.03.
9. When a vote was taken to decide whether to work on the basis of the Secretariat's draft or with another alternative proposal reflecting quantitative guidelines, opinions were equally divided by 16 votes to 16. The Committee therefore instructed the Secretariat to prepare a new document, taking into account the Secretariat's original proposal, the proposal made by Norway and other proposals to be submitted by administrations, for examination at the next session.

## II. SECRETARIAT COMMENTS

10. By the time of preparation of this document the Secretariat had not received any new proposals from interested Contracting Parties to amend the legal texts (see paragraph 3 above). The following definition of sauces applied by the EC in its Combined Nomenclature is therefore the only proposal received by the Secretariat to amend the legal texts :
- “For the purposes of heading 21.03, the expression “sauces” does not cover a preparation of vegetables, fruit or other edible parts of plants if the percentage of these ingredients passing through a metal wire sieve, with an aperture of 5 mm, is, after rinsing with water of a temperature of 20 °C, less than 80 % by weight, calculated on the original preparation.”
11. This proposal, which was presented by the EC at the HS Committee’s 21<sup>st</sup> Session (see Doc. 42.100, Annex IJ/2), was also the basis for the Norwegian proposal distributed during the 25<sup>th</sup> Session. In addition, in response to a letter sent to all Contracting Parties from the Secretariat concerning possible amendments to the Explanatory Notes, several countries (Tunisia, Turkey and the Czech Republic) have proposed identical amendments. It therefore seems that the EC proposal to amend the legal texts has some support.
12. On the other hand, at the 22<sup>nd</sup> Session of the HS Committee, several delegates already agreed that Explanatory Notes amendments would suffice to distinguish between sauces of heading 21.03 and certain products of Chapter 20 (see Doc. 42.750, Annex G/15, paragraph 7).
13. In view of the fact that the Harmonized System Committee has to consider possible amendments to the Explanatory Notes at its 26<sup>th</sup> Session in November (see paragraph 9 above), the Secretariat feels that it might be premature to examine possible legal amendments at this stage – not knowing the outcome of the HS Committee’s examination. However, the Secretariat leaves it to the Sub-Committee to decide what action should be taken at the present time.

## III. CONCLUSION

14. The Sub-Committee is invited to consider whether legal amendments would be required with a view to distinguishing sauces of heading 21.03 from certain products of Chapter 20, taking into account the comments of the Secretariat in paragraphs 10 to 13 above.
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