



HARMONIZED SYSTEM
COMMITTEE

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51st Session
-

O. Eng.

Brussels, 1 February 2013.

CLASSIFICATION OF THE PRODUCT CALLED "VITA HJERTEGO' GUL"

(REQUEST BY NORWAY)

(Item VIII.1 on Agenda)

I. BACKGROUND

1. On 5 December 2012, the Secretariat received the following Note from the Customs Administration of Norway.

II. NOTE BY NORWAY

2. "The Norwegian Customs Administration would like to have a classification question examined at the next session of the HS Committee. The product at issue is referred to as "Vita hjertego' Gul" and is used as a cheese substitute (cheese analogue). A sample of the product in question was handed over to the Secretariat during the last meeting of the Review Sub-Committee.
3. The product resembles yellow ("gul") cheese and is packaged in a flexible container of plastics containing 442 grams. It may be used with bread (as a sandwich), with pasta, sauces or salads.
4. According to the information provided by the manufacturer, the product consists (by weight) of 81.8 % skimmed milk, 7.7 % rape oil, 7.7 % sunflower-seed oil, 1.2 % salt, 1 % milk (whey) protein, 0.25 % oat oil, 0.2 % rennet, 0.1 % acidifying culture, 0.05 % colouring matter (*beta*-carotene) and 3.3 µg vitamin D. One hundred grams contain 31 grams of protein.
5. "Vita hjertego' Gul" is manufactured by the separation and pasteurisation of raw cow's milk, thus removing the cream and obtaining skimmed milk. A mixture of vegetable oils (rape

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oil, sunflower-seed oil and oat oil), in addition to beta-carotene and whey protein, is added, and this mixture goes through a specific process to make the vegetable fat resemble milk fat, so that the skimmed milk can “accept” the vegetable fat. After that, a bacterial culture is added. Next steps include ripening, adding of an enzyme, coagulation, separation of casein, heating, pressing (to remove water), forming, cutting and salting. Before consumption, the product has to be ripened for 7 to 10 weeks.

6. As to classification, this administration has considered several headings : heading 04.06 as “cheese”, heading 19.01 as “food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 % by weight of cocoa ...” or heading 21.06 as “food preparations not elsewhere specified or included”.



7. **Heading 04.06.** There is no definition for cheese in the legal texts or in the Explanatory Notes. However, the General Explanatory Note to Chapter 4, exclusion (b), on page I-4-2, reads :
- “(b) Products obtained from milk by replacing one or more of the natural constituents (e.g., butyric fats) by another substance (e.g., oleic fats) (heading 19.01 or 21.06).”
8. The fat content in the product at issue is obtained by replacing the milk fat by a mixture of vegetable oils, meaning that the butyric fats are replaced by oleic fats. Accordingly, classification in heading 04.06 should be ruled out.
9. **Heading 19.01.** Taking into account the fact that the product is essentially composed of milk constituents (81.8 % skimmed milk), the Norwegian Administration takes the view that it should be classified as a food preparation “of goods of headings 04.01 to 04.04”, in heading 19.01 (subheading 1901.90), by application of General Interpretative Rules 1 and 6, meaning that the residual **heading 21.06** can be ruled out.
10. In order to obtain uniform classification (world-wide) for cheese substitutes, we would like to have this classification question examined by the HS Committee at its next session in March 2013. (We have no bilateral dispute with another administration with regard to the classification of this product.)”

III. SECRETARIAT COMMENTS

11. At the outset, the Committee is reminded that at the 42nd Session it examined a product that was referred to as “cheese substitute”.¹

¹ See Doc. NC1360E1a (HSC/42) and NC1377E1b, Annex H/8 (HSC/42 – Report)

12. The cheese substitute was described as an edible product made of partially skimmed milk with the addition of partially hydrogenated soy oil, sodium chloride, calcium chloride, obtained by a process of coagulation, stretching, kneading and moulding. The product was said to be made of partially skimmed milk by 98 % and to contain 0.75 % of hydrogenated oil, with the fat matter content in dry extract to be between 9.2 % and 10.2 % for vegetable oil and between 38.8 % and 40.8 % for milk fat.
13. Like Norway, the Secretariat invoked exclusion (b) of the General Explanatory Note to Chapter 4 and provided the following comments :
14. *“Since the fat content in the product at issue is adjusted by the addition of vegetable oil, which accounts for an important proportion of the total fat content in the final product, the Secretariat would assume that part of the butyric fats are replaced by oleic fats. This being the case, the Secretariat would tend to rule out heading 04.06.*
15. *Taking into account the fact that the product is essentially composed of milk constituents, the Secretariat takes the view that it should be classified as a food preparation of goods of headings 04.01 to 04.04, in heading 19.01 (subheading 1901.90), by application of General Interpretative Rules 1 and 6.”*
16. When the Committee examined the issue, it was felt that in order to classify the product, the Committee would need a precise description and a sample of the product, as well as the following additional information :
- (i) What was the reason for which soya-bean oil was added and its function in the product;
 - (ii) Whether the addition of soya-bean oil to the product constituted a replacement of butyric fats by oleic fats;
 - (iii) How the product was presented and marketed; and
 - (iv) What products had been considered when exclusion (b) of the General Explanatory Note to Chapter 4 had been drafted.
17. The Committee also agreed that it was important to establish a demarcation line between products of headings 04.06, 19.01 and 21.06. Codex Alimentarius standards dealing with cheese might also be taken into consideration in order to decide what ingredients could be authorised in products of different headings.
18. First, the information on the Internet² suggests that the product is marketed as a healthy alternative to a regular cheese : it is claimed to have a lower content of saturated fats and calories, yet to taste as good as a normal cheese. Therefore, vegetable oils appear to have been added to the product to replace saturated fats with unsaturated ones, thereby improving its dietary characteristics.
19. Second, as far as the history of creation of exclusion (b) in the General Explanatory Note to Chapter 4 is concerned, the Secretariat’s archives show that this text was already found in the Brussels Nomenclature 1955 and has remained essentially unchanged during the drafting and subsequent review of the HS. The Secretariat has not been able to find any information with regard to the type of products that the drafters of the Brussels Nomenclature had in mind when creating this exclusion.

² <http://www.vektklubb.no/artikkel/matspaneren-vita-hiertego-qul-20002326>

20. However, it is worth noting that in the Brussels Nomenclature there had been no separate provisions in Chapter 19 for food preparations of headings 04.01 to 04.04, which were created only when the HS was drafted. The Secretariat has thus studied its records on the creation of these provisions in Chapter 19.
21. A proposal to specify preparations of milk in heading 19.01 was formulated by the Technical Team of the HS Committee during the drafting of the HS in 1976,³ with a view to reduce the scope of heading 21.07 (now heading 21.06) and heading 18.06 (for those containing cocoa). When this proposal was examined by the Nomenclature Committee at its 43rd Session (in 1979), note was taken of the fact that a large number of food preparations would be transferred from heading 21.06 to heading 19.01.⁴ The insertion of the reference to “products obtained from milk by replacing one or more constituent (e.g., butyric fats) by another substance (e.g., oleic fats)” as an example of products covered in heading 19.01 was subsequently agreed upon at the 28th Session of the HS Committee (in 1982).⁵ This can be construed as an indication that the Committee agreed that this category was one of those that would be moved from heading 21.06 to heading 19.01 as a result of the amendment of the legal text.
22. Third, as far as the Codex Alimentarius norms are concerned, the General Standard for Cheese⁶ does not refer to vegetable oil either as a raw material, or as a permitted ingredient, or as a food additive. In all likelihood, the product at issue will not qualify as cheese if the aforementioned Codex Standard were applied.
23. With regard to the product in question, the Secretariat finds itself agreeing with Norway that with milk accounting for as much as 81.8 % of the product, it can be legitimately considered as a food preparation of milk, within the meaning of heading 19.01. This approach would moreover be in keeping with the Explanatory Notes that clarify the distinction between products of headings 04.04, 04.06, 19.01 and 21.06.⁷
24. As far as the applicability of exclusion (b) of the General Explanatory Note to Chapter 4 is concerned, the Secretariat wishes to note that the addition of vegetable oil to a product containing milk fat will inevitably result in a product containing vegetable oil and a lower proportion of other fats in a given quantity of the final product compared to the balance of these ingredients before vegetable oil was added. In other words, oleic fats will simply crowd out the butyric fats and therefore, arguably, replace them. From this perspective, it can be assumed that the addition of vegetable oil to a product containing milk fat in all circumstances leads to a replacement of milk fat with vegetable oil, and thus a replacement of butyric fats by oleic fats, at least to a certain extent.
25. The Secretariat also concurs with Norway in that heading 21.06 will not apply for the product is specified in another heading, i.e., heading 19.01.
26. Finally, the Committee is informed that the Secretariat will not be able to display the sample received from Norway in the meeting room because the expiration date has long passed. Norway is invited to make another sample available to the Committee at the meeting.

³ Doc. 22.577

⁴ Doc. 25.167

⁵ Doc. 28.132

⁶ Codex STAN 283-1978 (<http://www.codexalimentarius.org/standards/en/>)

⁷ See the Explanatory Note to heading 04.04, item (d), on page I-0404-1, and the Explanatory Note to heading 19.01, item (III), first paragraph, on page IV-1901-III

27. The Secretariat suggests the following description of the article in question for the Committee's consideration.

Food preparation, consisting of, by weight, 81.8 % skimmed milk, 7.7 % rape oil, 7.7 % sunflower-seed oil, 1.2 % salt, 1 % milk (whey) protein, 0.25 % oat oil, 0.2 % rennet, 0.1 % acidifying culture, 0.05 % colouring matter (*beta*-carotene) and 3.3 µg vitamin D, obtained by mixing skimmed milk with vegetable oils and subsequent treatment by a bacterial culture and enzyme, coagulation, separation of casein, heating, pressing, forming, cutting and salting. Before consumption, the product has to be ripened for 7 to 10 weeks. The product is used as cheese substitute.

IV. CONCLUSION

28. The Committee is invited to examine the classification of the product at issue, taking into account the comments by Norway and the Secretariat above.
