

Annex G/3 to Doc. NC2304E1b
(HSC/58/Oct.2016)

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NC2265E1a	Classification of blanched ground-nuts (Request by South Africa).

DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O. Fr.)

1. With the agreement of the HS Committee, the Korean Administration gave a presentation to explain the methodology of the analyses carried out by the Korean laboratory and the results obtained.
2. The Deputy Director, and all the delegates who took the floor, thanked the Japanese, Korean and United States laboratories for their efforts and expressed their great appreciation of the study carried out by the Korean Administration, emphasizing how useful it could be for establishing a dividing line between the blanched ground-nuts of headings 12.02 and 20.08.
3. The US Delegate informed the Committee that her Administration had not been able to present results for the nitrogen solubility index, because the laboratories had not been able to obtain reliable results given the very low nitrogen content of the ground-nuts concerned.
4. Following the presentation by the Korean Administration, the EU Delegate raised the question of whether the results obtained (particularly those relating to the nitrogen solubility index) depended on the use of nitrogenous fertilisers. The Delegate of Korea explained that nitrogen solubility was determined based on the conversion into nitrogen of the proteins contained in the ground-nuts; it was not based directly on nitrogen. For this reason he considered that the use of nitrogenous fertilisers should not affect the results obtained. The Delegate of India asked whether the ground-nuts which had been analysed were capable of germination. The Delegate of Korea was of the opinion that they were not, bearing in mind the heat treatment they had undergone and the fact that their red skins had been removed. That being said, in his view the fact of no longer being capable of germination would not cause ground-nuts to be excluded from heading 12.02. In this connection he pointed out that heading 12.02 also covered broken ground-nuts which were not, of course, capable of germination in that form. Another delegate made reference to the Explanatory Notes to Chapter 12, and expressed the view that raw products of that Chapter were not always capable of germination.
5. Where the classification of blanched ground-nuts was concerned, there were differing views within the Committee.
6. The Australian delegate referred to the conditions governing the heat treatments permitted for the products of headings 12.01 to 12.07, which were specified in the second paragraph of the General Notes to Chapter 12 (page II-12-2). He said that blanched ground-nuts could be consumed directly as such, or used as an ingredient in food preparations. He added that they could also be subjected to further culinary processes such as roasting, production of ground-nut oil or peanut butter, etc. In his view, it was necessary to differentiate between ordinary blanched ground-nuts and blanched ground-nuts prepared for a specific use (salted, flavoured or coated ground-nuts, for example), which were classifiable in heading 20.08. Based on the analytical results in Tables 2 and 3 in Doc. NC2265E1a, which showed clearly that the characteristics of the ground-nuts concerned were closer to those of raw ground-nuts than those of roasted ground-nuts, this delegate was in favour of

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classifying them in heading 12.02. He considered that the ground-nuts at issue were not prepared for a specific use, and had the character of a natural product.

7. Several delegates expressed agreement with the previous speaker and, bearing in mind the analytical results obtained in terms of moisture content, enzyme activity and organoleptic properties, indicated that they would classify the blanched ground-nuts concerned in heading 12.02.
8. Given the complex nature of this case, and the variation in terms of the results obtained and the analytical methods used, some delegates considered that it would be advisable to ask the Scientific Sub-Committee for an interpretation of the results before the Committee ruled on the classification of the product.
9. However, other delegates considered that blanching gave ground-nuts the character of prepared products, and for that reason they opted for classification in heading 20.08. The Delegate of Argentina drew the Committee's attention to the fact that the General Explanatory Note to Chapter 12 laid down two conditions for the heat treatments permitted for headings 12.01 to 12.07, namely that the treatments should not alter the character of the products as natural products, and should not make them suitable for a specific use rather than for general use. For this reason she considered that it was not sufficient merely to determine whether, based on their physical and chemical characteristics, the ground-nuts concerned were more akin to raw ground-nuts than to roasted ground-nuts; it was also necessary to look into the reasons why the treatment had been carried out. In her view, blanching (which ultimately involved removing the red skins from the ground-nuts) was intended essentially to facilitate the subsequent processing of the ground-nuts – for example, coating or the production of peanut butter – and this made them suitable for a specific use rather than for general use.
10. On the subject of the dividing line between the heat-treated ground-nuts of headings 12.02 and 20.08, several delegates spoke in favour of referring the matter to the Scientific Sub-Committee, which could base its deliberations on the results obtained by the three laboratories. A delegate said that consulting the Scientific Sub-Committee on this point would be necessary only if the Committee decided to classify the blanched ground-nuts in heading 12.02. If the Committee took the view that blanching, regardless of the degree of heating involved, gave ground-nuts the character of prepared products, and therefore decided to classify the blanched ground-nuts concerned in heading 20.08, there would be no need to consult the Scientific Sub-Committee. If the Committee agreed that there was a need to introduce distinguishing criteria, this delegate considered that the necessary amendments should be made in the legal texts of the Nomenclature. In her view, the most reliable and most easily applicable parameter for this purpose – requiring neither the installation of sophisticated laboratory equipment nor the performance of complex analyses – was moisture content, which ranged from 3 to 6 % for raw ground-nuts (averaging 4.5 %), and was below 2 % for roasted ground-nuts. Several other delegates considered that the distinction could not be based on moisture content alone; account should also be taken of the nitrogen solubility index and of enzyme activity (catalase and peroxidase activity being negative in the case of roasted ground-nuts and positive for raw ground-nuts).
11. The Delegate of China took the view that the blanching was not to preserve the products but to give them the character of products which were otherwise prepared or preserved within the meaning of heading 20.08.

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12. However, other delegates took the view that it would be very difficult to arrive at a single set of distinguishing criteria, given the diverse characteristics of the different ground-nuts available on the market and the fact that Customs laboratories applied different methods of analysis. In this connection, a delegate recalled that the Scientific Sub-Committee had already addressed this matter, but had not deemed it possible to provide an overall solution to the problems linked to the classification of ground-nuts; consequently, the Sub-Committee had recommended classifying them on a case-by-case basis. Another delegate said that many Customs administrations, especially in developing countries, had no laboratory and therefore had to call on external laboratories or rely on the results presented by the importers, which was not always feasible.
13. At the end of the discussions, the Committee agreed that in the first instance it would determine the classification of the blanched ground-nuts at issue; next, depending on the outcome of the vote, it would specify any measures to be taken (consulting the Scientific Sub-Committee, amending the Explanatory Notes and/or the legal texts of the Nomenclature).
14. When the question of the classification of blanched ground-nuts was put to a vote, the Committee decided by 26 votes to 19 to classify the products at issue in heading 20.08 (subheading 2008.11), by application of GIRs 1 and 6.
15. In order to give effect to this decision, the Committee instructed the Secretariat to prepare a draft Classification Opinion for examination, in the first instance, by the next preessional Working Party.
16. As a result of this classification decision, the Committee did not deem it necessary to consult the Scientific Sub-Committee, or continue to study the possibility of establishing a dividing line between the blanched ground-nuts classifiable in headings 12.02 and 20.08.

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