

Subject: **Classification of a product called “pizza mix”**

The European Union wishes to submit a request for classification opinion concerning a product called “pizza mix” to the HS Committee for consideration.

Reasons for the request

The European Union has noted problems with the classification of a product called “pizza mix” and would like to submit a request for clarification on the classification of this product in the Harmonized System (HS).

The European Union has classified the product in heading 21.06, subheading 2106.90, and has learned that the Icelandic Customs Administration would classify the products in heading 04.06, subheading 0406.20. In accordance with Article 10.1 of the International Convention on the Harmonized System, the European Union has asked the Icelandic administration to express its views on the classification of these products, and received a reply with its arguments on classification. However, after both sides have presented their arguments, the authorities still classify the products under different headings.

Product description:

“Pizza mix” filling, a preparation containing low fat cheese curd (mozzarella), palm oil and potato starch as ingredients; mixed in a warm phase; filleted; shaped and cooled; Cut into strips or cubes, frozen (IQF).

The “pizza mix” is produced using processed cheese technology. This means different ingredients are mixed and heat-processed together in the first stages of the process. These ingredients are mozzarella curd, milk protein, vegetable oil, starches, processing salts, water.

The final specification of the “pizza mix” is one where the total fat content of the product is split roughly half-half between animal and vegetable. This recipe is what gives the product its specific properties as opposed to the recipes for ‘cheese-analogue’ where the fat is exclusively vegetable.

This preparation has a fat content of 25% (half from the low fat cheese curd and half from the palm oil, added during production).

This preparation contains more than 1.5% by weight of fats derived from milk, less than 5% by weight of starch / glucose and no sucrose.

The contents of the product are (approximately):

Mozzarella	82,50%
Palm oil	11,50%
Starch	4,50%
Remainder	1,50%

The analytical data for the finished product (mozzarella blended with palm oil and starch) is stated as:

53 % dry weight

25 % total fat content (= ca. 48 % in dry weight)

That means that the fat content which stems from the mozzarella is 25 % (total fat) – 11,5 % (palm oil) = 13,5 %. The fat content of the Mozzarella itself is accordingly $(100/82,5) \times 13,5 \%$ = ca. 16 %. This corresponds to a fat content in dry weight of $(100/53) \times 15 \%$ = ca. 30 %.

The product is presented in bags of 2 kg per 6 packed in a carton.

Classification

Classification by Icelandic authorities:

The EU understands that the Icelandic Customs, confirmed by the Icelandic Court of appeal, classifies the product in subheading 0406.20.

In the opinion of the Icelandic Customs, the fact that milk fat, or its other natural properties, are partially replaced by vegetable fat, does not affect the classification in Chapter 4. The addition of vegetable fat to milk fat alone is not sufficient to fulfil the conditions of Note 5 (c) to Chapter 4. In order to exclude the product from Chapter 4, it is necessary that vegetable fat has replaced the milk fat. For the product concerned, the traditional mozzarella cheese was assumed to be full fat and to constitute the effective product base (82-83%), and therefore Note 5 (c) to Chapter 4 does not apply.

The Icelandic authorities note that for a product of the contested consignment, it cannot be assumed that milk fats have been replaced by vegetable fats during the manufacture of the product, but that vegetable fats were added to milk fat during the preparation of the product. The Icelandic authorities further note that the application of Note 5 (c) to Chapter 4 is dependent on whether defatted milk was used in the production process and that just the addition of vegetable oil is not sufficient. The product was stated to be produced from (normal) mozzarella. Therefore, the Icelandic administration classifies the product in heading 04.06, subheading 0406.20.

Classification by the EU:

Legal provisions

Note 5 (c) to Chapter 4 states that “Products obtained from milk by replacing one or more of its natural constituents (for example, butyric fats) by another substance (for example, oleic fats) (heading 19.01 or 21.06)” are not covered by Chapter 4.

Heading 04.06 covers “cheese and curd”, subheading 0406.20 covers “grated or powdered cheese, of all kinds”.

According to the HSEN to heading 04.06, item (1), Mozzarella is classified in this heading:

“Fresh cheese (including cheese made from whey or buttermilk) and curd. Fresh cheese is an unripened or uncured cheese which is ready for consumption shortly after manufacture (e.g., Ricotta, Broccio, cottage cheese, cream cheese, Mozzarella).” However, in the view of the EU, the preparation in question cannot be considered as Mozzarella, due to the addition of palm oil (excluding it from subheading 0406.10).

Also, according to the HSEN to heading 04.06, item (3), processed cheese is classified in this heading:

“Processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting and emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting salts), one or more varieties of cheese and one or more of the following : cream or other dairy products, salt, spices, flavouring, colouring and water.” The same motivation as in the first paragraph is relevant (excluding the product from subheading 0406.30).

The HSEN to heading 04.06, the penultimate paragraph reads:

“The presence of meat, fish, crustaceans, herbs, spices, vegetables, fruit, nuts, vitamins, skimmed milk powder, etc., does not affect classification **provided** that the goods retain the character of cheese.”

Classification

Firstly, the EU states the product is clearly excluded from Chapter 4 as it is obtained from milk by replacing milk fat with palm oil (see Note 5 (c) to Chapter 4). The dry weight content of fat in mozzarella on average is 45 % (Wikipedia) or 40-50% (Codex Alimentarius, on Mozzarella). Based on the analytical data provided, the mozzarella used in the production of the pertinent product is a fat reduced mozzarella (ca. 30 % by dry weight). To increase the fat content to a level characteristic for full fat mozzarella and to reduce costs, palm oil has been added. Thereby, milk fat has been replaced with palm oil.

Secondly, the product is a processed blend of low fat mozzarella, palm oil and starch; mixed in a warm phase, filleted, shaped and cooled. It has thus lost the character of cheese, has become a processed food preparation, and therefore the product should be excluded from Chapter 4. The preparation was prepared directly from low fat mozzarella of heading 04.06 and then processed with palm oil and starch into a final product. According to the Codex Alimentarius General Standard for Cheese (CXS 283-1978, last amended in 2018), vegetable oil is neither a raw material nor a permitted ingredient in cheese production.

The EU has the following questions concerning the classification of this type of product.

A) Is Note 5 (c) to Chapter 4 applicable to a product obtained by comminuting and heating a mixture of mozzarella (82,5 %, of which ca. 11.5 % milk fat), palm oil (11.5 %), starch (4,5 %) and milk protein, processing salts and water (1.5 % combined)?

B) If the answer to A) is “no”: Is such a product classifiable as “cheese” of heading 04.06 even though the HSEN to heading 04.06, point 3, do not mention “palm oil” as an ingredient for processed cheese?

The EU also notes that based on the available analytical information it is evident that the product is made from partly defatted milk and vegetable oil, but it is not sure if the Icelandic court decision took this into account.

Based on the arguments above, the EU view is that the product should be classified in heading 21.06 (“food preparations not elsewhere specified or included”), subheading 2106.90, by applying GIRs 1 (Note 5 (c) to Chapter 4) and 6.

Conclusion:

Taking into account this situation, the EU invites the HS Committee to examine the classification and to issue a classification opinion.