**Summary meeting DG TAXUD on blanched peanuts**

1 December 2016

Attendees: A. Blaha; K. Van Muylem; N. Barner, DG TAXUD; Boulova FRUCOM; H. Driesens ENA; A. Santos ESA.

A.Boulova, H. Driesens and A. Santos presented arguments based on the joint letter.

**On the procedure:**

**EU level:** DG TAXUD will have a meeting with the EU Member States on 9th December to decide if the EU places a reservation to the WCO.

The decision now depends on the EU Member States.

If the EU Member States decide not to place the reservation, it will be up to other WCO members to influence the WCO process.

If the EU decides to place a reservation, it will need to prepare a short letter saying so and submit it to the WCO before end 2016. No content comments are expected at this stage. It will then have till summer 2017 to prepare technical arguments. Next year, these draft arguments will be submitted to the EU Member States for opinion before they are sent to the WCO.

Some Member States have already signalled to DG TAXUD they are not happy with the WCO proposal. TAXUD prefer not to disclose which MSs these are because they still have 1 week before the meeting and more comments can come in. TAXUD reminded that the EU only has 1 vote at the WCO. It is important that other WCO members place reservations.

During vote at the WCO, the EU voted to classify the product in chapter 12.

**WCO:** Decisions at the WCO are made by the Harmonised System Committee and confirmed by the Council. At the WCO level, the decision goes to the Council (summer 2017) and to the next HS Committee in September 2017. For the decision to be reversed, a new vote need to be taken.

The scientific subcommittee only gives advice and takes no decision.

**On the content:**

If the EU places a reservation, they would expect input from the associations in 2017. Their main interest is technical arguments. WCO and TAXUD classify goods based on the technical criteria, not economic considerations. They expect more detailed information from the sector regarding the processing stages, temperatures, time; including graphs; the fate of enzymes; analysis to distinguish blanched from other forms; specifications for the product; organoleptic tests, etc.

It is important from the customs prospective that the product is raw. The fact that a peanut is not ***roasted*** is not a sufficient argument, because it could be otherwise ***processed***. A processed nut will fall under chapter 20.

Additional arguments which could be developed in the future document:

* That blanched peanuts are for general use (e.g. ice-creams, chocolate bars, etc), and not specific use.
* Linked to food safety: removal of defect kernels minimises aflatoxin risk.
* Microbiological criteria

**Questions and answers:**

Is the EU bound by the decisions of the WCO? Answer: theoretically, yes. However, if one of the traders goes to the EU court claiming the WCO classification is not correct, the EU is bound by the EU court decision which takes precedence over WCO. But it must be an EU court decision, not a decision of an EU member state national court.

If the WCO process goes ahead, the next meeting will produce a classification opinion with specific product characteristics (for example, the temperature level to what the product has been submitted to be classified as blanched chapter 20). An importer could then claim that this specific temperature has not been reached, but it will be for the customs to decide on a case-by-case basis. DG TAXUD would prefer to avoid this.

If WCO however goes ahead, is there a possibility of establishing a separate tariff line under chapter 20 with a zero duty rate or a tariff rate quota?

It would depend on the specific origin (whether there is an EU preferential regime for the country in question), as well as on duties for codes beyond 8 digits. When explained that there is no duty lower than 11.2% for peanuts in chapter 20 and the main origins do not have preferential duty level, they did not wish to commit, stating that this would be going too many steps ahead.

DG TAXUD mentioned that should peanut reclassification go ahead, other nuts may follow.

If reclassification happens, some ideas were mentioned during the meeting. They will need to be further analysed and discussed:

 As this WCO case is based on the definition of the dry-blanched peanuts heat-treated at 138C for 25min, the trade may call for differentiating with the blanched process at 93C as stated in the EU regulation and creating two different classifications.

Going to the EU court, if favourable it will overrule the WCO decision

WTO panel

Anna Boulova, 2 December 2016