

Tariff classification of blanched groundnuts



South Africa has always been a net exporter of raw groundnuts, with a high demand for our product in especially European countries and Japan. Likewise, we have a stable local demand with an average commercial consumption of around 60 000mt – of which half goes toward the direct edible market and just over 40% to the manufacture of peanut butter.

When considering exports – which are limited more by supply than demand – and local requirements against production, the import and export figures published by the South African Revenue Service (SARS) under the different tariff lines help to gain some insight and perspective.

Three tariff lines are relevant in groundnut trade (excluding peanut butter):

- 1202.42: Groundnuts, not roasted or otherwise cooked, shelled or broken.
- 2008.11.20: Groundnuts, roasted.
- 2008.11.90: Groundnuts, other.

Eight years' trade volume data (2009–2016) are available on the SARS website for all three tariff lines. For six out of the eight years, the combined imports exceeded the exports. During this period, an average of 95% of exports were reported under tariff line 1202.42, or so-called 'raw' groundnuts.

Changes to import duties

Between 2009 and 2013, on average only 21% of the imports were counted as 'other' under tariff 2008.11.90. The relevance of these figures is the fact that for as long as anyone in the industry can recall, blanched groundnuts have always been declared under the 'other' tariff line. In 2014, the 'other' or blanched portion

substantially increased to 48% of the combined imports, according to SARS data.

According to internal policy and circumstances, countries attach different import duties to certain harmonised commodity description and coding system – harmonised system (HS) – tariff lines. In South Africa, import duties for tariff 1202.42 and 2008.11.90 are set at 10% and 0,99c/kg respectively.

The process refers to the removing of the skin from the kernels (seeds) through application of heat and a mechanical process.

In early 2015, reports from importers emerged, claiming that SARS had indicated that blanched products should no longer be cleared under Chapter 20, but instead under 1202.42. Since no official notice had been received, this caused substantial confusion – not only for importers who had earlier SARS determinations in favour of Chapter 20 on record but due to general practice prevailing, based on peer conduct.

Initial consultation between SARS and the South African Groundnut Forum (SAGF) representatives did not shed any light on the reason for the sudden change in how SARS officials applied the rules of interpretation as prescribed in the HS. However, in a letter to the SAGF from the chief officer: Customs and Excise at SARS in January 2016, it was stated that the determinations in early 2015 was

supported by an "informal opinion" issued by the World Customs Organisation (WCO) – of which the SAGF were regrettably unable to obtain a copy or website reference.

Significant effect on importers

The effect of this unforeseen reclassification had a significant and detrimental effect on importers. Firstly, existing seasonal contracts were not negotiated considering the higher import duty prescribed for heading 1202.42, and as such the economic viability of these contracts were suddenly highly questionable.

Secondly, SARS began a process of auditing all imports for the preceding two years (2013 and 2014), claiming duty, interest and fines on the basis that 1202.42 should have applied. Especially in light of the increased blanched imports for 2014, the amounts in question run into the millions of rand and if enforced will most probably have a crippling effect on numerous smaller import businesses. Based on pre-existing determinations and practice, individual importers have engaged in the lengthy process of appealing these findings with SARS.

On further enquiry, it became clear that interpretation of this specific issue differs among groundnut-trading countries – with some classifying blanched groundnuts under Chapter 12 and others under Chapter 20. The SAGF requested SARS – representing South Africa at the WCO – to lodge an official request for the classification and tariff code determination for blanched groundnuts. The secretariat received a letter from South Africa in July 2015, requesting the committee to address the issue at the 56th session of the Harmonised System Committee (HSC) at the WCO headquarters in Brussels,



Belgium (September 2015).

In this letter, the official viewpoint from the South African representatives was that blanching of groundnuts does not alter the character of the product. They are not "otherwise prepared" and must therefore be classified under heading 12.02. The presentation further highlighted the various viewpoints from the local industry, and a presentation by the SAGF was submitted along with this letter.

Blanching process

From correspondence, it is clear that the various methods of blanching – not only applicable to groundnuts – are one of the main issues complicating this matter. In a working document, the secretariat noted that in terms of groundnuts the process refers to the removing of the skin from the kernels (seeds) through application of heat and a mechanical process (such as brushes), thereby aiding the subsequent processing into other products such as peanut butter.

The secretariat further noted that for heading 12.02 to apply, the heat treatment applied must fulfil two conditions:

- It must be carried out at temperatures below that of roasting and cooking of groundnuts.
- It must not alter the character of the seeds as natural products.

It therefore seems that the issue would be resolved by either amending the wording in the headings and/or explanatory notes, or to determine whether the process of blanching does indeed alter the character of the kernels.

At the 57th session held in March 2016, the HSC continued their investigation into the matter and it was concluded that three volunteer administrations – Japan, the United States (US) and Korea – would analyse samples of blanched groundnuts submitted by South Africa, relating to parameters deemed most relevant by the Science Sub-Committee (SSC), with particular reference to organoleptic properties, moisture content, enzyme activity (peroxidase and polyphenols) and nitrogen (N) solubility index.

Classification implementation

These results were made available to the committee and discussed at the 58th session held between 28 September and 7 October 2016. When put to a vote, the HSC decided by 26 votes to 19 to classify blanched groundnuts under heading 20.08 (Subheading 2008.11) by application of General Interpretation Rules 1 and 6.

We have a stable local demand with an average commercial consumption of around 60 000mt .

Member countries had two months in which to file reservations against the implementation of the decision. Considering the great impact this decision would have on European imports in particular – where duty would increase from zero to between 11,2 and 12,8% – it is expected that major exporters such as the US and Argentina will continue with their diplomatic efforts to have this decision reconsidered at the next session set for March 2017.

For the time being, the SAGF has advised members to continue using heading 1202.42 until the process has run its course and the World Health Organisation (WHO) and SARS have given official statements and rulings in this regard. In any event, importers should ensure that they have an official SARS tariff determination at all times for any product they import, regardless of what is deemed as prevailing general practice.

The harmonised system and how it works

In over 200 countries, governments and private sectors use this internationally recognised, multi-purposed system as basis for custom tariffs and trade statistics such as taxes, trade policies, monitoring of controlled goods, trade and transport statistics, quota controls, economic research and analysis. The HS and WCO do however not provide information on duty rates as these custom duties are formulated and applied on a national level by WCO members.

According to the WCO website, the system covers around 5 000 commodity groups and over 98% of internationally traded merchandise, each identified by a six-digit code arranged in a logical structure and supported by rules and explanatory notes to ensure uniform classification and interpretation.

Developed by the WCO, the ongoing maintenance of the HS remains a priority in response to technology and trade developments. Contracted parties (member states) to the HS convention are represented on the HSC, which is tasked to examine and consider issues related to policy, classification questions, settlement disputes and preparing amendments to explanatory notes.

The full HS is also updated every five to six years. Decisions with regard to interpretation and application, for instance classification decisions and amendments to the explanatory notes, come into effect two months after approval by the HS committee, being reflected in amending supplements of the relevant WCO publications.

Any further updates will be communicated via the usual industry channels, including the SAGF meetings and correspondence as well as postings on the following blog page: <https://sagroundnut.com/>. For more information, contact Adri Botha at groundnutforum@opot.co.za. Visit www.wcoomd.org to learn more. 📍