



HARMONIZED SYSTEM
COMMITTEE

NC0044E1

-
23rd Session

O. Eng.

-
H2-1

Brussels, 19 April 1999.

POSSIBLE AMENDMENTS TO THE NOMENCLATURE TO CLARIFY
THE CLASSIFICATION OF CERTAIN VITAMIN-BASED PREPARATIONS

(Item VIII.6 on Agenda)

Reference documents :

38.905 (HSC/14)	40.600 Annex E/1, paragraphs 48 and 49 (HSC/18 - Report)
38.998 (HSC/14)	40.796 (RSC/15)
39.400 Annex IJ/7 (HSC/15 - Report)	40.870 Annex A/1 (SSC/12 - Report)
39.438 (SSC/9)	41.164 (RSC/16)
39.480 Annex A/4 (SSC/9 - Report)	41.580 Annexes B/3 and D/10 (RSC/16 - Report)
39.654 (HSC/16)	41.600 Annex D, paragraph 52 (HSC/20 - Report)
40.184 (HSC/17)	42.044 (HSC/21)
40.260 Annex H/2 (HSC/17 - Report)	42.093 (HSC/21)
40.361 (SSC/11)	42.101 (HSC/21)
40.544 (RSC/14)	42.100 Annex H/5 (HSC/21 - Report)
40.470 Annex C/17 (RSC/14 - Report)	42.750 Annex G/16 (HSC/22 - Report)

I. BACKGROUND

1. At the 14th Session of the Review Sub-Committee (September 1996), the Swiss Administration proposed amendments to the Nomenclature to facilitate the classification of vitamins in heading 29.36. However, the Sub-Committee postponed discussion of the Swiss proposal and agreed to consider the matter in connection with the question of the classification of certain vitamin-based preparations under examination at that time by the Scientific Sub-Committee. These preparations were various formulations sold under the trade names "Rovimix", "Lutavit" and "Microvit".
2. Following resolution of the specific classification questions referred to in paragraph 1 above, the Review Sub-Committee, at its 16th Session (September 1997), examined the Swiss proposal. In the absence of consensus, the Sub-Committee decided to submit the proposed texts in square brackets to the Harmonized System Committee for decision. Meanwhile the Canadian Administration had indicated that it would also submit a proposal in this regard and in December 1997, the Secretariat received a note from the Canadian Administration setting forth its proposal and related comments (see Doc. 42.044).

File No. 2494

3. The Harmonized System Committee, at its 22nd Session (November 1998), examined the proposals by Switzerland and Canada to amend the legal texts to clarify the classification of certain vitamin-based preparations. As regards the Swiss proposal, the following views were expressed.
- (i) The Delegate of Switzerland explained that the Swiss proposal to amend Note 1 (f) and Note 1 (g) to Chapter 29 and the text of heading 29.36 was consistent with the classification decisions taken at the Committee's 19th Session as well as the present Explanatory Note to heading 29.36. It was not the intention of his Administration to widen the scope of that heading. He also said that, according to industry sources, more than 80% of all vitamin products marketed contained additives of the type mentioned in the proposed heading text and therefore it was appropriate to mention those additives in the legal text in order to facilitate classification of such products.
 - (ii) While expressing sympathy for the Swiss proposal, the Delegate of the EC nevertheless argued that it would expand the scope of heading 29.36, because the additives mentioned in the proposed heading text, went beyond what was permitted in terms of Note 1 (f) and Note 1 (g) to Chapter 29. He cited examples of products such as Microvit and choline chloride, presently classified in heading 23.09, in this regard. He also asked the Delegate of Switzerland to clarify the nature of vitamin-based products containing colorants and odoriferous substances as mentioned in the proposed legal text for heading 29.36.
 - (iii) The Delegates of the United States and Japan were also concerned that the Swiss proposal would result in substantial transfers of products to heading 29.36, especially from Chapters 23 and 30. It was also noted that opening up Chapter 29 to preparations for specific use would disrupt the structure of this Chapter, which otherwise was restricted to pure chemicals.
4. After discussion, the Committee finally decided to re-examine the Swiss and Canadian proposals at the next session. The Canadian Administration was asked to submit a comprehensive revised proposal to the Secretariat, taking into account the comments made by delegates. The Swiss Administration was asked to furnish information to the Secretariat regarding the potential transfer of products to proposed heading 29.36 in order to clarify the scope of the proposed heading and to clarify the nature of the vitamin-based products containing colorants and odoriferous substances proposed to be included in the scope of that heading.
5. In response to the request of the Harmonized System Committee at its 22nd Session, the Secretariat received comments from the Swiss Administration on 12 February 1999 and a note from the Canadian Administration on 25 February 1999. These are reproduced in paragraphs 6 to 12 below.

II. NOTE BY THE CANADIAN ADMINISTRATION

6. "Further to the Agenda item VII.17, at the 22nd Session of the Harmonized System Committee, our Administration has further reviewed our proposal to amend the legal texts to clarify the classification of certain vitamin-based preparations. After careful consultation with industry, we have decided to withdraw our request to amend the Nomenclature to place these products in Chapter 21.

7. We regret the time that our considerations have taken. However, we hope that the result will simplify the discussions of the upcoming Session.”

III. COMMENTS FROM THE SWISS ADMINISTRATION

8. “One of the effects of the amendments made to the text of heading 29.36 is to settle the classification of vitamins combined with other substances according to the provisions of GIR 2 and GIR 3, i.e., generally according to the matter (substance) giving the product its essential character, without, however, ruling out classification according to GIR 1 in cases where these combinations of substances appear to have the character of a preparation or a product named in a heading text. The scope of heading 29.36 remains solely for products corresponding to the legal text of the heading. All the other products are excluded from this heading (e.g., choline chloride).
9. In principle, it is not the intention of the Swiss Administration to widen the scope of this heading. The vitamins at issue are used in human foodstuffs, preparations for animal feeding or for pharmaceuticals. Their area of use is therefore general and not specific. The products of heading 29.36 generally differ from the premixes of heading 23.09 because of the homogeneous nature of all the particles and the formulation technology used in production. However, simply mixing the vitamins with a weighting agent would result in the product obtained being excluded from heading 29.36. The possibility cannot therefore be ruled out that some products currently classified in heading 23.09 would have to be transferred to heading 29.36. However, as the amendment does not affect the Classification Opinion on “Microvit”, Switzerland feels that the fears expressed regarding the extent of the possible transfers are groundless. Preparations and premixes for human foodstuffs or animal feed, containing vitamins, are also excluded from heading 29.36 and will remain classified as before respectively as food preparations of heading 19.01 or 21.06, for example, or as preparations used in animal feeding of heading 23.09. Medicaments for therapeutic or prophylactic purposes containing vitamins would also remain classified in Chapter 30. The new text would not therefore result in any transfers from Chapter 30 to heading 29.36.
10. The proposed amendments are explained in paragraphs 3 to 6 of Doc. 40.544. In this context, Switzerland stresses that current Note 1 (g) to Chapter 29 mentions “a colouring or odoriferous substance”. As these additives are added to facilitate the product’s identification or for safety reasons, the risk of disrupting the structure of Chapter 29 or of significant transfers from other headings is negligible. These additives, which are essential for the production of vitamins, change neither the use, purpose or characteristics of the product. In the interests of the clarity, Switzerland felt it useful to regroup all the classification criteria in the heading text. However, this new text seems to have raised doubts which still persist among some delegations. The Swiss Administration is willing to take account of some of the comments made, and therefore proposes maintaining the current Note 1 (g) to Chapter 29 unchanged and deleting “whether or not containing anti-dust agents, colorants or odoriferous substances” from its proposed new text to heading 29.36.

11. In the light of the foregoing, the Swiss proposal will now read as follows:

Note 1 (f)

The products mentioned in (a), (b), (c), (d), or (e) above, except products of heading 29.36, with an added stabiliser (including an anti-caking agent) necessary for their preservation or transport.

Text of heading 29.36

Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, whether or not intermixed, in solution, stabilised, coated or adsorbed.

12. The Swiss proposal specifies the classification of stabilised, coated or adsorbed vitamins and is compatible with the classification decision taken at the Committee's 19th Session and with the existing Explanatory Note to heading 29.36. It is aimed at settling at legal text level, the current situation in the Explanatory Notes concerning procedures for stabilising vitamins. The description in the heading text contains the forms in which vitamins are put up for sale by the chemical industry and covers over 80% in volume terms of the world's vitamin trade. The proposal clarifies the situation and will lead to harmonized classification throughout the world. Classification of vitamins stabilised by coating or adsorption outside heading 29.36 would rob this heading of a very large part of its content and would thus be in contradiction with the WTO Agreement on Pharmaceuticals."

IV. SECRETARIAT COMMENTS

13. As indicated in paragraph 10 above, the amendment to Note 1 (g) has been deleted from the original Swiss proposal. Moreover, the reference to "whether or not containing anti-dust agents, colorants or odoriferous substances" has been deleted from the originally proposed text of heading 29.36. Therefore the Secretariat considers that the concern expressed in paragraph 3 above regarding the possible expansion of the scope of heading 29.36 has been dispelled to some extent.
14. Nevertheless, the Secretariat is not in a position to assess to what extent the scope of heading 29.36 would be expanded by the revised proposal compared with the present text without knowing the actual trade in the relevant products. Therefore, the Secretariat leaves it to the Committee to decide what action to take in this regard.

V. CONCLUSION

15. The Committee is invited to take account of the Canadian note in paragraphs 6 and 7 above, and to examine the Swiss comments in paragraphs 8 to 12 above.
