



HARMONIZED SYSTEM  
COMMITTEE

-  
29<sup>th</sup> Session  
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NC0540E1

O. Eng.

Brussels, 22 March 2002.

GUIDELINES WITH REGARD TO THE POSSIBLE APPLICATION OF GIRS 3 (a) AND 3 (c)  
IN THE CONTEXT OF THE CLASSIFICATION OF CERTAIN CHEMICAL PRODUCTS

(Item VIII.1 on Agenda)

Reference documents :

NS0034E2, Annex A/7, paragraph 7 (SSC/16 – Report)    NC0465E1 (HSC/28)  
NC0366E1 (HSC/27)    NC0510E2, Annex G/4 (HSC/28 – Report)  
NC0430E2, Annex E/2 (HSC/27 – Report)

I. BACKGROUND

1. At its 28<sup>th</sup> Session, the Harmonized System Committee discussed the application of General Interpretative Rules 3 (a) and 3 (c) in the context of the classification of two chemical products, raised during the 16<sup>th</sup> Session of the Scientific Sub-Committee.
2. One delegate, supported by a number of other delegates, agreed that there was no need to resort to General Interpretative Rule (GIR) 3 to classify the products at issue, since they could be classified by application of GIRs 1 and 6, i.e., by application of Note 3 to Chapter 29, which stipulated that goods which could be included in two or more of the headings of Chapter 29 were to be classified in that one of those headings which occurred last in numerical order. This would result in the classification of commodities having an oestrogen or progestogen function, and an androgen function in subheading 2937.29.
3. Responding to this approach, the Director questioned whether GIR 6 allowed the application of Note 3 to Chapter 29 at subheading level, thus leaving the question whether or not GIR 3 (a) and (c) could apply, open. He reminded delegates that the first sentence of GIR 3 (a) did not require the goods being mixed or composite.
4. Some other delegates, however, took the view that the commodities should be classified in accordance with their main function. There were, however, different views with respect to the main function and with respect to whether or not these chemical products could even be considered as having a dual function, since literature on this issue seemed not to be unequivocal. In this context, one delegate pointed out that the Explanatory Note to

File No. 2849

heading 29.37, on page 479, indicated that the main hormonal function of prasterone was the androgen function.

5. Another delegate pointed out that this question had come from the Scientific Sub-Committee, which essentially had raised the question of whether GIR 3 could be used to classify a single substance which had two functions mentioned in two different subheadings. The two substances referred to in the document had been given as examples. In fact, the possibility of applying Note 3 to Chapter 29 would facilitate the classification of a whole series of products of that Chapter. In that connection, he argued that GIR 6 permitted the application of GIR 1 to determine the classification of goods at subheading level, adding in its final sentence that "the relative Section and Chapter Notes also apply". Given that GIR 1 did not refer only to the terms of the headings, but also to the Section and Chapter Notes, the application of Note 3 to Chapter 29 would appear to be appropriate.
6. Following these discussions, the Committee agreed (i) to study the applicability of Note 3 to Chapter 29 and similar Notes elsewhere in the Harmonized System at subheading level (by application of GIR 6), and (ii) to ask the Scientific Sub-Committee to provide more information with respect to the functions of prasterone and tibolone.

## II. SECRETARIAT COMMENTS

7. The Secretariat would like to point out first, that the classification of prasterone and tibolone will be dealt with under Item V.2 of the Agenda, the possible classification of these products provoking the discussion on whether or not GIR 3 (c) could be applied in a structure where one of the alleged functions was specifically mentioned in a subheading, whereas the other one was covered by the subheading reading "Other".
8. Having said this, the Secretariat wonders whether the question at issue (i.e., the possible application of GIR 3 (c) in the context of the classification of certain chemical products) is still relevant, given the fact that (i) the Committee agreed to discuss this issue on the basis of specific products rather than on a general basis, and (ii) the classification of the two specified products seems to have been agreed upon. The Committee may, therefore, agree to put aside this question, due to lack of specific examples.

### **Application of Note 3 to Chapter 29 or similar Notes elsewhere in the Nomenclature, at the subheading level**

9. The Committee agreed to study the applicability of Note 3 to Chapter 29 and similar Notes elsewhere in the Nomenclature, at the subheading level. Note 3 to Chapter 29 reads as follows :
  - "3.- Goods which could be included in two or more of the headings of this Chapter are to be classified in that one of those headings which occurs last in numerical order."

10. The Secretariat has found the following Notes, which are similar to Note 3 to Chapter 29 :

Section or Chapter Note	Text
Note 4 to Chapter 39 (last paragraph)	If no single comonomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration.
Note 7 to Chapter 48	Except where the terms of the headings otherwise require, paper, paperboard, cellulose wadding and webs of cellulose fibres answering to a description in two or more of the headings 48.01 to 48.11 are to be classified under that one of such headings which occurs last in numerical order in the Nomenclature.
Note 2 (A) to Section XI (second paragraph)	When no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration.

11. The question whether or not the above Section and Chapter Notes can be applied at the subheading level, is closely related to General Interpretative Rule 6, which states, in pertinent part :
- “For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.” (emphasis added).
12. So, at what point does the context otherwise require ? The Explanatory Note to GIR 6, first paragraph, item (II) (b), on page 8, states that the expression “unless the context otherwise requires” means “except where Section or Chapter Notes are incompatible with subheading texts or Subheading Notes”. This sounds logical, but the Secretariat is not sure that it covers all cases, as will be shown below.
13. The part of GIR 6 referring to the applicability of Section and Chapter Notes at the subheading level (see paragraph 11 above), does not include the modifier “*mutatis mutandis*” (*Concise Oxford Dictionary, Tenth Edition, completely revised* : = making the necessary alterations while not affecting the main point), which means that the Note at issue should be read and applied, as it is. In other words, where a Section or Chapter Note includes the term “heading”, this term shall not be altered to read “subheading”. Since the Notes referred to in paragraphs 9 and 10 above all use the term “heading”, none of them can be applied at the subheading level. Consequently, GIR 3 is to be applied in the case a commodity is, *prima facie*, classifiable in two or more subheadings at the same level.
14. In addition to the above-mentioned reason, the Secretariat feels that there are some more reasons why the Section or Chapter Notes referred to in paragraphs 9 and 10 above cannot be applied at the subheading level.
15. First, the context “requires otherwise” when a Section or Chapter Subheading Note provides for the classification at the subheading level. Therefore, Note 2 to Section XI, which refers, among others, to headings 58.09 and 59.02, cannot be applied at the subheading level for these headings, since Subheading Note 2 to that Section provides for the classification at the subheading level for Chapters 56 to 63. Although Subheading Note 1 to

Chapter 39 does not explicitly refer to copolymers or polymer blends in which no single comonomer unit predominates, the introductory paragraph of that Subheading Note states that “Within any one heading of this Chapter, polymers (including copolymers) and chemically modified polymers are to be classified according to the following provisions” (emphasis added). In addition, the last sub-paragraph of Subheading Note 1 to Chapter 39 provides for the classification of polymer blends at the subheading level, indicating that they are to be classified in the same subheading as polymers of the same monomer units in the same proportions. These provisions seem to rule out the application of Note 4, last paragraph, to Chapter 39 at the subheading level. In both cases, the Section or Chapter Notes are incompatible with the relevant Subheading Notes.

16. Second, the Secretariat also considers that a Section or Chapter Note cannot be applied at the subheading level when the Note contains a reference to one or more specific headings. Consequently, Note 7 to Chapter 48, which refers explicitly to headings 48.01 to 48.11, cannot be applied to the subheadings of these headings or of any other heading of Chapter 48.
17. In conclusion, the Secretariat considers that the Section and Chapter Notes referred to in paragraphs 9 and 10 above, are not applicable at the subheading level.

### III. CONCLUSION

18. The Committee is invited to rule on the question whether or not Note 3 to Chapter 29 and similar Notes elsewhere in the Nomenclature are applicable at the subheading level, taking into account the observations of the Secretariat in paragraphs 7 to 17 above.
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