



HARMONIZED SYSTEM
COMMITTEE

-
31st Session
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O. Eng.

Brussels, 15 April 2003.

STUDY OF THE PHRASE “UNLESS THE CONTEXT
OTHERWISE REQUIRES” AS USED IN GIR 6

(Item VIII.3 on Agenda)

Reference documents :

NS0034E2, Annex A/7, paragraph 7 (SSC/16 – Report)	NC0540E1 (HSC/29)
NC0366E1 (HSC/27)	NC0590E2, Annex H/1 (HSC/29 – Report)
NC0430E2, Annexes E/1 and E/2 (HSC/27 – Report)	NC0621E1 (HSC/30)
NC0465E1 (HSC/28)	NC0655E2, Annex G/11 (HSC/30 – Report)
NC0510E2, Annex G/4 (HSC/28 – Report)	

I. BACKGROUND

1. At its 30th Session, the Committee discussed the possible impact of the application of Note 3 to Chapter 29 at the subheading level, following a reservation entered by the **Mexican** Administration.
2. After some discussion, the Committee agreed to ask the Secretariat to carry out a study for its next session on the phrase “unless the context otherwise requires” as used in General Interpretative Rule (GIR) 6, and within the specific context of the application of Note 3 to Chapter 29.

II. SECRETARIAT COMMENTS

3. To facilitate discussion, the Secretariat has reproduced below, the texts of GIR 6 and Note 3 to Chapter 29.

GIR 6

File No. 2849

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For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires. (Emphasis added.)

Note 3 to Chapter 29

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.

4. The Secretariat takes the view that the second sentence (and, consequently, the phrase “unless the context otherwise requires”) of GIR 6 should be read separately from the content and scope of the first sentence of that Rule. Whereas the first sentence of Rule 6 addresses the applicability of GIRs 1 to 5 at subheading level, the second sentence addresses the question of whether or not Section or Chapter Notes apply at subheading level. The Secretariat also understands from the structure of GIR 6 (i.e., two separate sentences, each referring to the applicability of certain provisions) that the possible applicability of Section or Chapter Notes at the subheading level is not the result of the application of GIRs 1 to 5, but follows from the provisions laid down in the second sentence of GIR 6.
5. In this connection, the Secretariat would like to inform the Committee that the current structure of the Rule is the same as the one presented for consideration to the former Harmonized System Committee in 1982 (Doc. 28.163), and that no comments or questions with respect to the second sentence were submitted by administrations at that time. The only question raised about GIR 6 was by the Delegate of **Japan** and concerned certain expressions used in the first sentence. He was told that the expression “*mutatis mutandis*” clearly meant “with the necessary changes to be made”, i.e., in the present context it meant that where the word “headings” appeared in the preceding Rules it should be replaced by “subheading” (Doc. 29.600, Annex V, paragraph 56 – (former) HSC/29 Report).
6. The text of the second sentence does not include the expression “*mutatis mutandis*”, but is qualified by the phrase “unless the context otherwise requires”. This implies, in the Secretariat’s view, that, when applied for the purposes of Note 3 to Chapter 29, no changes should be made to the wording of that Note. In other words, the term “headings” as used in Note 3 to Chapter 29 cannot be replaced by “subheadings”.
7. The context of Note 3 to Chapter 29 is to lay down specific classification rules for goods which could be included in two or more of the headings of that Chapter (emphasis added). In this connection, the Secretariat would note that the heading structure of Chapter 29 is quite different from the subheading structure of its individual headings. It is, therefore, in the Secretariat’s view, nonsensical to apply a Note that was drafted and designed for the heading structure at the structured nomenclature level. The following examples may illustrate the different structures, taking into account the fact that the first 35 headings of Chapter 29 are based on the chemical structure of the compounds, whereas headings 29.36 to 29.41 are based on the function of the compounds.
8. A lactone of heading 29.32 (e.g., ascorbic acid) is at the same time a vitamin (of heading 29.36). By application of Note 3 to Chapter 29, this lactone is to be classified in heading 29.36. Similarly, a cyclic alcohol (e.g., allylestrenol) which is used primarily for its hormone function, is to be classified in heading 29.37 (hormones, etc.) and not in heading 29.06 (cyclic alcohols).

9. Within the headings of Chapter 29, the structure of the subheadings is based either on the chemical structure of the compound or on the function of the compound. For example, the one-dash subheadings of heading 29.32 are based on the presence of a certain chemical structure, and are structured as follows :
- Compounds containing an unfused furan ring (whether or not hydrogenated) in the structure
 - Lactones
 - Other.
10. The one-dash subheadings of heading 29.18, on the other hand, are based on the chemical function (alcohol, phenol, etc.) of the compound, and are structured as follows :
- Carboxylic acids with alcohol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives
 - Carboxylic acids with phenol function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives
 - Carboxylic acids with aldehyde or ketone function but without other oxygen function, their anhydrides, halides, peroxides, peroxyacids and their derivatives
 - Other.
11. From the foregoing the Secretariat concludes that the context of Note 3 to Chapter 29 is to provide for the classification of the products of the Chapter at heading level, taking into consideration the structure of the headings of that Chapter. Since GIR 6 requires that the context should not require otherwise in order to apply any Chapter Note at subheading level, Note 3 to Chapter 29 cannot be applied at subheading level which, as shown by the above examples, has a different structure (context) from the heading level structure (context).

III. CONCLUSION

12. The Committee is invited to examine the question whether or not Note 3 to Chapter 29 is applicable at subheading level, taking into account the observations of the Secretariat above.
13. The Committee is also invited to indicate what further action should be taken with regard to this matter. In this connection the Committee is reminded that the Committee, at its 29th Session (May 2002), agreed to expressly inform the Scientific Sub-Committee of its decision and to amend the General Explanatory Notes to Chapter 29, as needed.
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