



HARMONIZED SYSTEM
COMMITTEE

-
27th Session
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NC0366E1

O. Eng.

Brussels, March 2001.

GUIDELINES WITH REGARD TO THE POSSIBLE APPLICATION
OF GIRs 3 (a) AND 3 (c)
(Item V.3 on Agenda)

Reference document :

NS0034E2, Annex A/7, paragraph 7 (SSC/16 – Report)

I. BACKGROUND

1. At its 16th Session, the Scientific Sub-Committee discussed the classification of certain chemical products in the Harmonized System Commodity Data Base. Views were, however, divided as to whether General Interpretative Rule (GIR) 3 (a) or 3 (c) should be applied for the classification of hormones having both oestrogen- and androgen-like effects. The applicable subheadings for the two products concerned (i.e., Prasterone and Tibolone) were placed in square brackets, pending the outcome of the discussions in the Committee (see Doc. NS0034E2, Annex C/5). It was agreed that the Secretariat would prepare a document with appropriate examples for the consideration of the Harmonized System Committee at its next session.

II. SECRETARIAT COMMENTS

2. The Secretariat would like to point out first that, by application of General Interpretative Rule 6, GIR 3 is applicable at the subheading level, unless the context otherwise requires. In the case at issue, no Subheading Note nor any other specific provision with respect to the classification at subheading level, is applicable.
3. To facilitate the discussions, the relevant parts of GIR 3 and heading 29.37 (HS 1996 and HS 2002 editions) have been reproduced below. It should be noted, however, that the references to heading 29.37 serve as an example only, and that the classification rationale is also applicable to other headings with a similar structure.

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GIR 3

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :
 - (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
 - (b) (. . .)
 - (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Heading 29.37

| HS 1996 | HS 2002 |
|---|---|
| - Other hormones and their derivatives; other steroids used primarily as hormones : 2937.91 -- Insulin and its salts 2937.92 -- Oestrogens and progestogens 2937.99 -- Other | - Steroidal hormones, their derivatives and structural analogues : 2937.21 -- Cortisone, hydrocortisone, prednisone (dehydrocortisone) and prednisolone (dehydrohydrocortisone) 2937.22 -- Halogenated derivatives of corticosteroidal hormones 2937.23 -- Oestrogens and progestogens 2937.29 -- Other |

4. In the case at issue, the question is whether the subheading reading “Oestrogens and progestogens” (i.e., subheading 2937.92 (HS 1996) or 2937.23 (HS 2002), respectively) is more specific than subheading 2937.99 (HS 1996) or 2937.29 (HS 2002), which reads “Other”, and which would cover the androgen function of the hormones in question.
5. Whenever the term “Other” is used in a subheading (either at the one-dash or at the two-dash level), it captures all products not referred to or included in any of the subheadings (at the same level) before. It also avoids a (long) listing of all the commodities thus covered, although the term (theoretically) could be replaced by a list mentioning all the products (or functions) covered.
6. In this context, the Secretariat would like to refer to the Explanatory Note to GIR 3 (a), Part (V), on page 4, which stipulates that : “when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the others. In such cases, the classification of the goods shall be determined by Rule 3 (b) or 3 (c)”. Although the products at issue are in fact not mixed or composite goods, as

required by GIR 3 (a), the Secretariat can see a certain similarity in connection with their functions (i.e., a combination of the oestrogen and androgen functions).

7. That being the case and taking into account its observation in paragraph 5 above, the Secretariat considers that the term "Other" does not provide a more general description than a description given in another subheading at the same level (e.g., by mentioning one of the two (or more) functions of the commodity). Consequently, GIR 3 (a) would not apply, thus leaving the product to be classified in the subheading "Other" by application of GIR 3 (c).
8. If the Committee agrees with the view expressed above by the Secretariat, the Secretariat suggests amending the Explanatory Notes to clarify this situation, which could be done by inserting the appropriate wording into the Explanatory Note to GIR 3 (a).

III. CONCLUSION

9. The Committee is invited :
 - i) To decide on the question whether or not a subheading named "Other" provides a more general description in the case that it would cover one (or more) of the characteristics of the product, whereas the other characteristic of the product is mentioned specifically in another subheading at the same level, taking into account the Secretariat's observations in paragraphs 2 to 8 above; and
 - (ii) To indicate what further action should be taken in this regard.
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