



HARMONIZED SYSTEM
COMMITTEE

-
29th Session
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NC0542E1

O. Eng.

Brussels, 1 March 2002.

POSSIBLE AMENDMENTS TO THE EXPLANATORY NOTES WITH A VIEW TO CLARIFYING
THE CLASSIFICATION OF VITAMIN PREPARATIONS

(Item VIII.3 on Agenda)

Reference documents :

NC0484E1 (HSC/28)
NC0510E2, Annex H/4 (HSC/28 – Report)
NR0257E1 (RSC/25)
NC0534E1 (HSC/29)

I. BACKGROUND

1. At its 28th Session, the Harmonized System Committee examined the classification of a Vitamin C preparation (referred to as “Nature Made® Vitamin C 500 mg Supplement with Rose Hips”) containing ascorbic acid, corn starch, croscarmellose sodium, cellulose, rose hips, stearic acid, lemon bioflavonoid complex, magnesium stearate and acerola. According to the label on the container, this product was not intended to diagnose, treat, cure or prevent any disease.
2. Many delegates expressed the view that classification of vitamin preparations in the Harmonized System often caused problems, sometimes because the texts of the Harmonized System were not clear enough, but more often because national health authorities in many countries had another view than Customs authorities with regard to the definition of medicaments. In this regard it was pointed out that since health regulations might vary from country to country, it was extremely important to classify such products by application of the rules laid down in the Harmonized System.
3. Most of these delegates were of the opinion that classification of such products had to be determined on a case by case basis, taking into account several criteria. In this regard one delegate mentioned that in his country the following criteria were normally used :

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- the amount of vitamins or minerals in the product and the recommended daily intake (by international health organizations) of these vitamins or minerals;
 - the labelling on the products, e.g., with regard to dosage and warnings; and
 - the opinion of the national health authorities with regard to these products.
4. As to the classification of the product at issue (“Nature Made® Vitamin C 500 mg Supplement with Rose Hips” (tablets)), all delegates that spoke, except one, expressed the view that this product had to be classified in heading 21.06. In their opinion this product, which contained ingredients (other than vitamins) which were not allowed according to the provisions of Note 1 to Chapter 29, had to be excluded from heading 29.36. Furthermore, by application of Note 1 (a) to Chapter 30, classification in heading 30.04 was not possible.
5. One delegate, however, informed the Committee that his administration had in the past classified such products in heading 21.06, but since the courts in his country had recently decided to classify such products as medicaments, he could not support classification in heading 21.06.
6. When the question was put to a vote, the Committee decided, by 26 votes to 1, to classify “Nature Made® Vitamin C 500 mg Supplement with Rose Hips” (tablets) in heading 21.06 (subheading 2106.90).
7. In order to reflect this decision, the Committee instructed the Secretariat to prepare a draft Classification Opinion for examination by the next preessional Working Party (see Item VII.3 on Agenda).
8. At the request of some delegates, the Secretariat was also instructed to prepare draft amendments to the Explanatory Notes (in particular the Explanatory Note to heading 29.36), with a view to clarifying the classification of vitamin preparations. In this regard, interested Contracting Parties were invited to send in their proposals as soon as possible.
9. Administrations that were interested in modifying the legal texts with regard to the classification of vitamin preparations were requested to submit proposals to the Review Sub-Committee.
10. Finally, some delegates indicated that their administrations had experienced no problems in classifying vitamin preparations. Therefore, they did not see a need to amend the Explanatory Notes and preferred the status quo.

II. SECRETARIAT COMMENTS

11. At the time of the preparation of this document, the Secretariat has not yet received any new comments with regard to this agenda item. However, the Russian Administration has submitted a proposal which referred both to food supplements and to vitamin preparations. Furthermore, the Russian submission it contained proposals to amend both the legal texts to Chapter 21 and to Chapter 30, and a proposal to amend the Explanatory Note to heading 21.06. The Secretariat was therefore not quite certain whether this proposal related to this agenda item or to an ongoing issue in the Review Sub-Committee dealing with possible amendments to the Nomenclature to specifically mention “food supplements”. Nevertheless, the Secretariat decided to submit the Russian proposals to the Review Sub-Committee (see Doc. NR0257E1 (RSC/25)).

12. The Secretariat believes that the legal situation with regard to the classification of vitamins and vitamin preparations is quite clear. However, the Secretariat agrees that the corresponding situation with regard to the Explanatory Notes can be improved. The Secretariat would therefore like to clearly indicate in the Explanatory Note to heading 29.36 that this heading does not include vitamin preparations. It is therefore proposed to insert the following new exclusion on page 468 :

“(1) Vitamin preparations containing ingredients (other than vitamins) which are not permitted according to the provisions of Note 1 to Chapter 29, e.g., plant extracts, fruit concentrates or mineral salts (heading 21.06).”

(Renumber present exclusions (1) to (6) to (2) to (7)).

13. Based on the Committee's decision, the draft Explanatory Note above could, in the Secretariat's view, be examined by the next preessional Working Party.
14. In view of the fact that “food supplements” containing added vitamins already are mentioned in the Explanatory Note to heading 21.06 (see Item (16)), the Secretariat considers that corresponding amendments to this Explanatory Note are not needed at this stage.

III. CONCLUSION

15. In the light of the Secretariat's comments, the Committee is invited to :
- (a) indicate whether the Explanatory Notes should be amended;
 - (b) give its opinion on the proposal made in paragraph 12 above and indicate what further action should be taken.
