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ARTICLE

Harmonized System in Developing Countries

Carsten Weerth*

More than 200 countries and economic regions worldwide are using the nomenclature of the Harmonized Commodity Description and Coding System (Harmonized System Convention: HS) and are basing their customs tariffs thereon. The number of HS headings (four-digit code) and HS subheadings (six-digit code) is altered every four to six years, when the nomenclature is revised and updated due to trade patterns and technical development (HS 1988, HS 1992, HS 1996, HS 2002, HS 2007). More gaps are emerging within the nomenclature and 34 headings will not be in use in the HS 2007 for the next four to six years. This article examines the application of the nomenclature within developing countries, since these are allowed to adopt older versions of the nomenclature.

I. INTRODUCTION

The Harmonized Commodity Description and Coding System (Harmonized System Convention, Brussels 14 June 1983: in short Harmonized System, or HS) for the customs classification of goods into the tariff scheme of the HS nomenclature has resulted in the worldwide annealing of tariff nomenclatures since its first usage in 1988. It is in use in more than 200 countries and economic regions (however only 133 countries are contracting parties¹) and more than 98% of all trans-border trade is statistically and economically classified by help of the HS nomenclature.² The customs classification of goods is complex and depending on numerous rules, in particular on the terms of 1,221 HS headings (however, a further

34 HS headings are not in use³), and 380 notes according to General Rule (GR 1) and on the terms of 5,052 HS subheadings and 9,699 subheadings and 56 subheading notes (within the EC)⁴ according to GR 6.⁵

The HS nomenclature (HS 1988) was revised in 1992 (HS 1992), 1996 (HS 1996⁶), 2002 (HS 2002⁷) and 2007 (HS 2007⁸) and certain headings that are no longer in use, have been cancelled.

The World Customs Organization (WCO) has published new background information on the usage of the nomenclature in the contracting parties of the HS, which sheds new light on the issue of the application in the developing countries.⁹ Therefore this article examines the application of the HS nomenclature in the developing countries.

Notes

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1 Syria is the 132nd contracting party to join the HS Convention (November 2007) and is going to apply the HS nomenclature from 2009 (or earlier); Tanzania is the 133rd contracting party to join the HS Convention (February 2008) and has applied the HS nomenclature since 2008.

2 See Wind (2007).

3 See Weerth (2008b).

4 See Weerth (2008c).

5 See Weerth (2008a).

6 See Czakert (1995a; 1995b).

7 See Weerth (2001).

8 See Weerth (2006).

9 The term 'developing countries' is not defined within the HS. Therefore the list of WTO Member States that understand themselves as 'developing countries' should be applicable; see: <www.wto.org/english/tratop_e/devel_e/d1who_e.htm> (visited 8 Jun. 2008). On the list of the least-developed countries (LDCs) there are fifty countries, of which thirty-two are also WTO members; see: <www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm> (visited 8 June 2008). Another definition from the International Monetary Fund (IMF) – see: <www.imf.org/external/index.htm> simply distinguishes between developed countries and 'emerging and developing countries'.

II. OVERALL APPLICATION OF THE NOMENCLATURE?

The HS nomenclature has resulted in the annealing of the worldwide used nomenclatures for statistical and customs classifications. The genesis and aims of the HS Nomenclature are very well researched and documented.¹⁰ The same applies to the four revisions of the nomenclature. However, the actual application of the HS nomenclature and its problems have rarely been subject of systematic research (and if so than mostly within the EC).¹¹ The common assumption has been that the application of the HS nomenclature is uniform in all contracting parties (therefore the gaps are occurring in all tariffs, the headings are containing the same commodities, etc.).¹²

The publication of the WCO background paper enables research about topics that were not possible to examine before. Are all developing countries applying the nomenclature as well as industrial countries?

III. PARTIAL APPLICATION OF THE NOMENCLATURE IN DEVELOPING COUNTRIES

In general, all HS contracting parties have agreed to apply the nomenclature of the HS (Article 2 HS, the whole nomenclature is attached as annex to the HS) according to HS Article 3– the first six digits cannot be altered and must be applied in the national customs tariffs.

Article 4 HS contains waivers for developing countries (see Box 1).

Box 1

ARTICLE 4 HS

Partial application by developing countries

1. Any developing country Contracting Party may delay its application of some or all of the subheadings of the HS for such period as may be necessary, having regard to its pattern of international trade or its administrative resources.
2. A developing country Contracting Party which elects to apply the HS partially under the provisions of this Article agrees to make its best efforts towards the application of the full six-digit HS within five years of the date on which this Convention enters into force in respect of it or within such further

period as it may consider necessary having regard to the provisions of paragraph 1 of this Article.

3. A developing country Contracting Party which elects to apply the HS partially under the provisions of this Article shall apply all or none of the two-dash subheadings of any one one-dash subheading or all or none of the one-dash subheadings of any one heading. In such cases of partial application, the sixth digit or the fifth and sixth digits of that part of the HS code not applied shall be replaced by '0' or '00' respectively.

4. A developing country which elects to apply the HS partially under the provisions of this Article shall on becoming a Contracting Party notify the Secretary General of those subheadings which it will not apply on the date when this Convention enters into force in respect of it and shall also notify the Secretary General of those subheadings which it applies thereafter.

5. Any developing country which elects to apply the HS partially under the provisions of this Article may on becoming a Contracting Party notify the Secretary General that it formally undertakes to apply the full six-digit HS within three years of the date when this Convention enters into force in respect of it.

6. Any developing country Contracting Party which partially applies the HS under the provisions of this Article shall be relieved from its obligations under Article 3 in relation to the subheadings not applied.

However, HS Article 5 (see Box 2) contains special provisions that entitle developing countries to ask for technical assistance.

Box 2

ARTICLE 5

Technical assistance for developing countries

Developed country Contracting Parties shall furnish to developing countries that so request, technical assistance on mutually agreed terms in respect of, inter alia, training of personnel, transposing their existing nomenclatures to the HS and advice on keeping their systems so transposed up-to-date with amendments to the HS or on applying the provisions of this Convention.

The WCO background paper of February 2008¹³ shows the application of the nomenclature in each of the 133 contracting parties and in particular

Notes

10 See Müller (1975); Anon (1987); and Cludius (1987).

11 See Bür (1977); Vander Schueren (1991); Vermulst (1994); Vander Schueren (1997); and Weerth (2007).

12 See, in particular, Weerth (2008a–2008e).

13 See WCO (2008).Notes

which version of the nomenclature is being applied.

Of the 133 HS contracting parties, not all apply the version of the HS 2007 – this was unexpected because the WCO has always sought is uniform application and on the other hand this topic has not been subject to research because no data were available prior to the publication of the WCO background paper.

Table 1 shows all of the HS contracting parties that do not apply the nomenclature in the version as of 1 January 2007 (HS 2007) but use older versions.

IV. CONCLUSION

Older versions of the HS nomenclature are applied by thirty developing countries.

Chad is still using the HS 1992, Haiti and supposedly Yemen are still applying the HS 1996. Twenty-seven developing countries are still using the HS 2002 and only 99 HS contracting parties are applying the HS 2007. Three contracting parties – Syria, Tajikistan, and Tanzania – are contained in Table 1; however, these are not yet applying the nomenclature. It must be assumed that these new contracting parties will start with HS 2007.

Article 4 HS contains waivers for developing countries. The HS drafting persons of the HS were of the opinion ‘better an annealing in similarity than no convention’, which was very understandable in the early 1980s and has resulted in an remarkable success of the overall HS convention however that opinion cannot be sufficient a quarter of an century later and it must therefore be questioned. At the beginning of the 21st century, the usage of different HS nomenclatures is not adequate anymore since databases and the electronic exchange of data shall facilitate global trade. The uniformity of the application of customs tariffs worldwide is contradicted by HS Article 4 and its waivers for the developing countries. Thirty developing countries are using these waivers (see Table 1). That means that they are using nomenclatures of an older version (HS 1992, HS 1996, or HS 2002). Only 99 out of 133 contracting parties are using the newest version of the nomenclature – HS 2007. That means that industrial nations, developing countries are using different customs tariff schemes from thirty emerging economies and developing countries.

V. REVISION OF HS ARTICLE 4?

The WCO has been requested to consider revision of HS Article 4 in order to ensure that all contracting parties are using the same version of the HS.

Article 5 HS contains regulations for technical assistance of developing countries for providing training and technical assistance of more developed countries. The WCO or the developed country in

charge of the technical assistance could surely look after financial problems.

The aim of the uniform application of all customs tariffs worldwide in order to facilitate global trade and to receive worldwide comparable statistical data

Table 1: HS Contracting Parties with Older Versions of the HS Nomenclature (HS 1992–HS 2002)

No.	HS Contracting Party	HS Nomenclature
1	Bangladesh	HS 2002
2	Benin	HS 2002
3	Cambodia	HS 2002
4	Cameroon	HS 2002
5	Chad	HS 1992
6	Colombia	HS 2002
7	Democratic Republic of Congo	HS 2002
8	Eritrea	HS 2002 (?)
9	Ethiopia	HS 2002
10	Gabon	HS 2002
11	Guinea	HS 2002
12	Haiti	HS 1996
13	Iran	HS 2002
14	Kenya	HS 2002
15	Libya	HS 2002
16	Maldives	HS 2002
17	Mali	HS 2002
18	Mauritania	HS 2002
19	Moldavia	HS 2002
20	Nigeria	HS 2002
21	Panama	HS 2002
22	Peru	HS 2002
23	Philippines	HS 2002
24	Qatar	HS 2002
25	Swaziland	HS 2002
26	Ukraine	HS 2002
27	United Arab Emirates	HS 2002
28	Uzbekistan	HS 2002
29	Venezuela	HS 2002
30	Yemen	HS 1996 (?)
31	Tajikistan	–
32	Tanzania	–
33	Syria	–

Note: This list contains twelve least-developed countries according to WTO definitions.

on world trade, has been undermined by the adaptation of the older versions of the nomenclature in thirty developing countries. As a result, trade data of imports and exports cannot be used for research and that global trade is not being facilitated but obstructed for the economic operators in question.

In order to receive a real annealing of customs tariffs worldwide and to receive a uniform application of the nomenclature the WCO should ask the developing countries to participate with the newest version of the HS nomenclature. Furthermore, the WCO should provide all possible technical, training and financial support in order to reach that aim.

VI. SOLUTIONS: TECHNICAL ASSISTANCE AND FINANCIAL HELP FOR DEVELOPING COUNTRIES

A possible solution could be a longer period in which to use the old HS nomenclature for developing countries in order to receive more time for the adaptation to the newest version of the nomenclature. However, the amount of adaptation at the time of a HS revision is similar in all parts of the world, regardless of the stage of development of the contracting party. A longer period of time for adjustment for developing countries should not be favoured in order to receive the uniform application.

The WCO is asked in order to facilitate the uniform application of the HS nomenclature in all contracting parties to provide helpful overviews and adjustment software in order to succeed with the adjustment on new versions of the HS nomenclature.

That suggestion would help all participants of global trade – developed countries, emerging economies and developing countries alike and all concerned economic operators.

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