

Weerth, Carsten

Article — Published Version

Harmonized System: Binding Pre-entry Information on Customs Classification

Global Trade and Customs Journal

Suggested Citation: Weerth, Carsten (2008) : Harmonized System: Binding Pre-entry Information on Customs Classification, Global Trade and Customs Journal, ISSN 1569755X, Kluwer Law International, Alphen aan den Rijn, Vol. 3, Iss. 10, pp. 357-362

This Version is available at:

<https://hdl.handle.net/10419/197971>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

Harmonized System: Binding Pre-entry Information on Customs Classification

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 basing 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). The World Customs Organization (WCO) has recommended the introduction of programmes for binding pre-entry customs classification information in national customs legislation in order to provide secure information on classification issues and tariff rates for economic operators and customs authorities. This article examines the introduction of binding pre-entry classification information within the HS contracting parties.

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 strengthening 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 percent of all trans-border trade is statistically and economically classified with 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 1988⁶) has been revised in 1992 (HS 1992), 1996 (HS 1996⁷), 2002 (HS 2002⁸) and 2007 (HS 2007⁹) and certain headings that are no longer in use have been cancelled.

The WCO has published new background information on the usage of the nomenclature in the HS contracting party states, and which sheds new light on the issue of the introduction of pre-entry customs classification data as was recommended by the WCO in 1996.¹⁰ Therefore, this article examines the application of pre-entry customs classification information in the HS contracting parties.

II. RECOMMENDATION FOR THE INTRODUCTION OF PRE-ENTRY CUSTOMS CLASSIFICATION

The WCO issued a recommendation (see Box 1) on 18 June 1996¹¹ on the introduction of national programmes

Notes

- * Dr Carsten Weerth BSc (Glasgow) is legal expert in European customs law and works with the German Customs and Excise Service in Bremen. He is a frequent contributor to the scientific journals *AW-Prax* (*Zeitschrift für Außenwirtschaft in Recht und Praxis*) und *ZfZ* (*Zeitschrift für Zölle und Verbrauchsteuern*), author of seven books on European customs law, co-author of two legal comments on European customs law and lecturer at the Hochschule für Öffentliche Verwaltung Bremen, University of Applied Sciences.
- 1 See Weerth (2008a), 141; Syria was the 132nd contracting party to join the HS Convention (in November 2007) and is to apply the HS nomenclature from 2009 (or earlier); Tanzania was the 133rd contracting party to join the HS Convention (in February 2008) and already applies the HS nomenclature.
- 2 See Wind (2007), 82.
- 3 See Weerth (2008c).
- 4 See Weerth (2008d).
- 5 See Weerth (2008b), 61–67.
- 6 See Reiser and Wurzinger (1987).
- 7 See Czakert (1995a, 1995b).
- 8 See Weerth (2001).
- 9 See Weerth (2006).
- 10 See WCO (2008).
- 11 See WCO (1996).

Box I

**RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL (known as WCO)
ON THE INTRODUCTION OF PROGRAMMES FOR BINDING PRE-ENTRY
CLASSIFICATION INFORMATION**

(18 June 1996)

THE CUSTOMS CO-OPERATION COUNCIL,

NOTING that the Harmonized System has been widely adopted by countries and Customs or Economic Unions,
NOTING that many Customs administrations have implemented or intend to implement programmes for binding pre-entry classification information on the basis of the Harmonized System,

RECOGNIZING the benefits of programmes for binding pre-entry classification information in facilitating international trade, in particular, by ensuring certainty and predictability in the application of the Harmonized System,

RECOGNIZING that such programmes are useful for promoting uniform classification in the Harmonized System,

TAKING ACCOUNT of the advisability of replacing, by a Recommendation, the Council

Resolution of 25 June 1991 on the introduction of pre-entry classification information programmes,

RECOMMENDS that Members and Contracting Parties to the Harmonized System Convention take all appropriate action to introduce programmes for binding pre-entry classification information, as soon as possible, while respecting the basic principles set out in the Annex hereto, and

REQUESTS Members and Contracting Parties to the Harmonized System Convention to notify the Secretary General of their acceptance of this Recommendation and of the date of its application. The Secretary General will transmit this information to Members and to Contracting Parties to the Harmonized System Convention.

ANNEX

Basic principles of programmes for binding pre-entry classification information:

1. Any person may make a request in writing to a duly designated authority for binding information on the classification of goods in the HS-based nomenclature in respect of an actually envisaged import or export operation. The request shall contain, in particular, a full description of the goods as well as any necessary additional details to enable their identification (brochures, samples, etc.) so that the authority is able to classify them.
2. The information shall be communicated in writing to the applicant as soon as possible.
3. The information thus communicated is binding, in accordance with the terms set out therein, on the Customs authorities as against the holder of such information in respect of the tariff classification of goods in the country or Customs territory to which the issuing authority belongs, for at least one year from the date of issue, subject to paragraph 4 or 5.
4. The information may be annulled if it was given on the basis of incorrect or incomplete details provided by the applicant.
5. The information ceases to be valid:
 - (i) where it becomes incompatible with new tariff measures or judicial decisions taken by the national authority or by the Customs or Economic Union concerned or
 - (ii) where the holder of such information is notified in writing of its withdrawal, revocation or amendment because of, for example, further details that have been obtained and which affect such information.
6. A period of grace may be provided under this programme with respect to paragraph 5.

for binding pre-entry customs (or tariff) classification in order to receive higher legal security on the complex issue of how to classify certain goods and commodities.

The WCO background paper of February 2008¹² shows the application of the nomenclature in each of the 133 contracting parties and in particular whether the above said recommendation is applied.

Of the 133 HS contracting parties, not all are issuing binding pre-entry information on the customs classification of goods – this result is rather

unexpected because this information is vital to legal security in global trade. Economic operators are strongly relying on customs classifications for calculating prices and therefore secure information is of the utmost importance. This topic has not been subject to research because no data were available prior to the WCO background paper.

Table 1 shows all of the HS contracting parties that are applying pre-entry information of customs classifications.

Notes

¹² See WCO (2008).

Table 1: HS Contracting Parties with Binding Pre-entry Information on Customs Classifications

No.	HS Contracting Party	Date	No.	HS Contracting Party	Date
1	Argentina	18.03.1997	33	Latvia	19.07.1999
2	Azerbaijan	10.11.2004	34	Lebanon	06.06.2007
3	Australia	06.08.2002	35	Lithuania	25.08.1997
4	Austria	07.01.1997	36	Luxemburg	07.01.1997
5	Belarus	01.07.2006	37	Macedonia	01.07.2004
6	Belgium	07.01.1997	38	Madagascar	01.01.2007
7	Brazil	12.07.1996	39	Malaysia	10.06.1997
8	Bulgaria	07.01.2003	40	Maldives	05.10.2006
9	Canada	18.09.1996	41	Malta	01.05.2004
10	China	01.04.2000	42	Mexico	20.08.1996
11	Colombia	29.11.2002	43	Mongolia	04.11.2003
12	Croatia	01.01.2000	44	Netherlands	07.01.1997
13	Cuba	09.02.1998	45	Norway	18.09.1996
14	Cyprus	22.01.2002	46	Pakistan	03.12.2001
15	Czech Republic	01.05.2004	47	Poland	03.07.2001
16	DR Congo	01.04.2007	48	Portugal	07.01.1997
17	Denmark	07.01.1997	49	Rep. South Korea	09.08.1996
18	Egypt	13.03.2006	50	Romania	23.06.1996
19	Estonia	01.05.2004	51	Russia	15.02.2002
20	EU	07.01.1997	52	Serbia	01.04.2006
21	Fiji	16.06.1996	53	Slovakia	04.06.1997
22	Finland	07.01.1997	54	Slovenia	02.06.1997
23	France	01.01.1997	55	South Africa	26.09.1979
24	Germany	07.01.1997	56	Spain	07.01.1997
25	Greece	07.01.1997	57	Sweden	07.01.1997
26	Hungary	03.09.2002	58	Switzerland	06.02.1997
27	Iran	07.09.2004	59	Tunisia	12.09.1997
28	Ireland	07.01.1997	60	Turkey	06.10.1997
29	Italy	07.01.1997	61	Ukraine	01.06.2005
30	Japan	24.03.1997	62	United Kingdom	07.01.1997
31	Kazakhstan	15.07.2002	63	United States	27.02.1997
32	Kuwait	21.05.1997	64	Uzbekistan	30.11.2002

Note: The date of application within the EC (07.01.1997) is rather astonishing because the legal text for binding pre-entry customs classification was in force from 1 January 1994 (Article 12 CC and Articles 5 to 15 CCIP). The WCO date is either due to a late date of information by the commission or some EC Member States were simply late to issue binding pre-entry information. In Germany, BTI were issued according to Article 12 CC from 1 January 1994.

Only 64 HS contracting parties out of 133 have introduced the WCO recommendation on binding pre-entry customs classification in their national customs legislation. All 27 EU Member States (and the EU itself,

which is also a HS contracting party) are applying the binding pre-entry customs classification.

Only 36 HS contracting parties, which are not EU Member States (see Table 2), are applying the

Table 2: HS Contracting Parties Applying Binding Pre-entry Information on Customs Classification (Non- EU Member States)

No.	HS Contracting Party	No.	HS Contracting Party	No.	HS Contracting Party
1	Argentina	13	Fiji	25	Norway
2	Azerbaijan	14	Iran	26	Pakistan
3	Australia	15	Japan	27	Rep. South Korea
4	Belarus	16	Kazakhstan	28	Russia
5	Brazil	17	Kuwait	29	Serbia
6	Canada	18	Lebanon	30	South Africa
7	China	19	Macedonia	31	Switzerland
8	Colombia	20	Madagascar	32	Tunisia
9	Croatia	21	Malaysia	33	Turkey
10	Cuba	22	Maldives	34	Ukraine
11	DR Congo	23	Mexico	35	United States
12	Egypt	24	Mongolia	36	Uzbekistan

Table 3: HS Contracting Parties Without Binding Pre-entry Information on Customs Classification

No.	HS Vertragspartei	No.	HS Vertragspartei	No.	HS Vertragspartei
1	Algeria	24	Israel	47	Philippines
2	Andorra	25	Ivory Coast	48	Qatar
3	Bahrain	26	Jordan	49	Republic Congo
4	Bangladesh	27	Kenya	50	Rwanda
5	Benin	28	Kyrgyzstan	51	Saudi Arabia
6	Bhutan	29	Lesotho	52	Senegal
7	Bolivia	30	Libya	53	Singapore
8	Botswana	31	Malawi	54	Sri Lanka
9	Burkina Faso	32	Mali	55	Sudan
10	Cambodia	34	Mauritania	56	Swaziland
11	Cameroon	35	Mauritius	57	Syria
12	Central African Republic	36	Moldova	58	Tajikistan
13	Chad	37	Montenegro	59	Tanzania
14	Chile	33	Morocco	60	Thailand
15	Eritrea	38	Myanmar	61	Togo
16	Ethiopia	39	Namibia	62	Uganda
17	Gabon	40	Nepal	63	United Arab Emirates
18	Ghana	41	New Zealand	64	Venezuela
19	Guinea	42	Niger	65	Vietnam
20	Haiti	43	Nigeria	66	Yemen
21	Iceland	44	Panama	67	Zambia
22	India	45	Paraguay	68	Zimbabwe
23	Indonesia	46	Peru		

binding pre-entry information on customs classifications.

Sixty-eight HS contracting parties are not applying the WCO recommendation on binding pre-entry information on customs classification, for example, some major trade partners of the EU and the United States: Algeria, Chile, India, Indonesia, Iceland, Israel, Morocco, New Zealand, Saudi Arabia, Singapore, South Korea, Thailand and the United Arab Emirates.

IV. CONCLUSION

A. Application of Binding Pre-entry Information

Binding pre-entry information on customs classifications prior to import is issued by 64 of the 133 HS contracting parties (see Table 1). All 27 EU Member States also issue binding pre-entry information (however the EU itself, which is also a member of the HS is not issuing pre-entry information). Some major global trade nations are applying this recommendation, for example – Australia, China, Japan, Canada, South Africa, Mexico, Norway and Switzerland.

B. No Application of Binding Pre-entry Information

No binding pre-entry information on customs classifications prior to import is issued by 68 of 133 HS contracting parties (see Table 3), and of which some are major trade partners of the EU and the United States – for example, Algeria, Chile, India, Indonesia, Iceland, Israel, Morocco, New Zealand, Saudi Arabia, Singapore, South Korea, Thailand and the United Arab Emirates. Most countries that are not applying the binding pre-entry information are developing countries.

V. DISCUSSION

Binding pre-entry information on customs classifications prior to import is an important issue for economic operators in order to calculate the costs of international trade and an instrument for legal security (as well for the customs authorities).

Only 34 HS contracting parties that are not EU Member States are issuing binding pre-entry information on customs classification according to the WCO recommendation. The WCO recommendation is very similar to the EC Customs Code binding tariff information (BTI) however the WCO binding pre-entry information shall be valid for at least one year whereas the EC BTI is valid for six years now and for three years under the modernized Customs Code.

Major trade partners of the EU and the US are not applying the WCO recommendation on binding pre-entry information.

Apparently the WCO has no means to urge HS contracting parties to apply a useful and rather important recommendation. Therefore, the major trade partners of countries that are not applying the binding pre-entry information are asked to advertise this issue, for example, when acting as foreign trade partner (the EU and the United States could act when negotiating over bilateral preferential agreements on trade with partner states). However, developed contracting parties are asked to assist developing countries according to Article 5 HS by technical (and financial) support on issues of the application of the HS and its nomenclature when this help is required and asked for.

Therefore the introduction of binding pre-entry information on customs classification in developing countries should be looked after by help of the WCO – the HS council and its developed nations.

The EU and the United States (along with other major world trade nations, such as Australia, Canada, China, and Japan) are issuing binding pre-entry information on customs classification and are facilitating global trade by issuing legal security on the tariff rate for their customs services and economic operators. This legal instrument should also be available for exporters of these countries when importing into other HS contracting parties.

References

- Czakert, E. (1995a). *Das Harmonisierte System 1996*. Cologne: 1995.
- Czakert, E. (1995b). *Die Revision des Harmonisierten Systems zum 1. Januar 1996*, AW-Prax. 422–424.
- Reiser, B., & R. Wurzinger (1987), *Das Harmonisierte System zur Bezeichnung und Codierung der Waren des internationalen Handels – Aktueller Stand der Arbeiten zur Erleichterung des internationalen Handels und zur Verbesserung internationaler Statistiken*. Cologne: 1987.
- WCO (1996). *Recommendation on the introduction of programmes for binding pre-entry classification information*. Available at: <www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Harmonized%20System/HS%20Recommendations/HS_reco_june1996_EN.pdf> (visited 14 June 2008).
- WCO (2008). *Position of Contracting Parties to the Harmonized System Convention And Non-Contracting Party Administrations*. February 2008. Available at: <www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Harmonized%20System/Situation%20au%202014-02-2008-EN.pdf> (visited 14 June 2008).
- Weerth, C. (2001). *Das Harmonisierte System 2002*, AW-Prax, 373–376.

- Weerth, C. (2006). *Das Harmonisierte System 2007*. AW-Prax, 499–503.
- Weerth, C. (2007). *Einheitliche Anwendung des Gemeinsamen Zolltarifs beim Zugang zum Europäischen Binnenmarkt?* (Dissertation, Universität Oldenburg) [Uniform application of the Common Customs Tariff at market entry to the EC-Common Market?] (PhD thesis, accepted 23 August 2007) (Sierke Verlag, Göttingen: Sierke Verlag).
- Weerth, C. (2008a). HS 2007: *New Countries Are Applying the Harmonized System Nomenclature*. 3 GTCJ 3.
- Weerth, C. Basic Principles of Customs Classifications under the Harmonized System. GTCJ 3, no. 2, (2008): 61–67 (Weerth 2008b).
- Weerth, C. HS 2007: New Gaps Emerging within All Customs Tariffs. GTCJ 3, no. 4 (2008): 141 (Weerth 2008c).
- Weerth, C. HS 2007: Notes of the Tariff Nomenclature and the Additional Notes of the EC. *World Customs Journal (WCJ)* 2, no. 1 (2008): 111–115 (Weerth 2008d).
- Wind, I. HS 2007: What's it All About?. GTCJ 2, no. 2 (2007): S. 79–86.