

HS 2002–HS 2017: Notes of the tariff nomenclature and the additional notes of the EU revisited

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Abstract

The fundamental rules for the classification of goods in compliance with the Harmonized System (HS) for the description and coding of goods are, according to General Rule 1, solely the six general rules of classification, the terms of headings and notes (and according to General Rule 6, the terms of subheadings and subheading notes). The rules of the European Union (EU) tariff schedule are complex, and while the overall number of headings and subheadings is known, the notes of the HS nomenclature, the Combined Nomenclature (CN) and the Common Customs Tariff (CCT) of the EU have only been examined in a systematic way for the CN 2007. This paper reviews all notes (and subheading notes) which are in force worldwide by virtue of the HS 2017 (for sections and chapters), examines the previous versions of the HS (HS 2002, HS 2007, HS 2012) and also examines the sections and chapters in front of which the EU has placed further so called ‘additional notes’ in its CN which are only valid throughout the EU.

The HS 2017 contains 386 notes and 63 subheading notes, which are valid worldwide. The EU has added 109 additional notes within the CN and the CCT (as of December 2016) that influence the implementation of the CCT by the application of different and more rigid definitions of goods and methods of analysis. Sixty per cent of the additional notes relate to agricultural goods (Chapters 1–24). The 558 notes of the CN are legal rules that apply to the 1,222 HS headings, 5,387 HS subheadings and 9,528 CN subheadings. This clearly demonstrates the complexity of the rules of the CCT which contains more than 16,500 legal rules for the classification of goods.

A. Introduction

1. Fundamentals of tariff classification

Customs classification of goods into the tariff scheme of the Harmonized System (HS) nomenclature is complex and depends on numerous rules—General Rule 1 (GR 1) specifies that the rules are limited to the terms of headings and notes, while General Rule 6 (GR 6) provides that the rules include the terms of subheadings and subheading notes (Weerth, 2008a).

2. Legal basis

The requirements of the HS nomenclature are identical for the more than 200 countries and economic regions that base their tariff schemes and economic statistics on the HS nomenclature. This is because the HS members have agreed (in Article 3 para. 1 letter A HS), to apply the structure of the HS nomenclature and only to create further divisions within their tariffs (according to Article 3 para. 3 HS), when these divisions do not contradict the system and structure of the HS nomenclature. In the European Union (EU) the nomenclature is further divided by the combined nomenclature (CN),¹ which allows further subdivisions of the HS nomenclature in Article 1 para. 2 Reg-CN and the possibility of the creation of ‘additional notes’, which are only valid within the EU.

3. Scope of rules HS 2017/CN 2017

But how many rules need to be taken into consideration for the classification of goods into the CN and the Common Customs Tariff (CCT) of the EU? How have the rules of the CN changed between the versions of the HS 2002/CN 2002 and HS 2017/CN 2017? In an earlier paper (Weerth, 2008a) the notes of the HS 2007/CN 2007 have been examined. This paper widens the scope of the research and compares four major versions of the HS and CN.

The nomenclature of the HS 2017 comprises 21 sections, 96 chapters (Chapters 1–97; Chapter 77 is not in use), 1,222 HS headings (a further 37 headings are not in use) and 5,387 HS subheadings (Statistisches Bundesamt, 2016; Weerth, 2016).

The CN regulations incorporate the HS nomenclature and add 9,528 CN subheadings (Statistisches Bundesamt, 2016).

Within the HS nomenclature there are notes and subheading notes before sections and chapters. The EU applies these notes and subheading notes and, furthermore, adds ‘additional notes’.

There are three types of notes within the CTT of the EU, two of which are valid worldwide (HS notes and HS subheading notes) while the third type, CN the additional notes, are only valid within the EU.

The notes of the HS nomenclature have not yet been the focus of systematic research, having only been examined in depth twice (Theis, 2003; Weerth, 2004). Both examinations tried to classify the notes in terms of aims, contents and usage. While the notes of the CN 2007 were systematically analysed in 2008 (Weerth, 2008b), this paper will investigate all notes of the EU Tariff from 2002 to 2017, with a focus on HS 2017/CN 2017.

B. Examination of the notes

1. Material and methods

This examination was conducted with the CN 2002 (OJ 2001, No. L 279/1), the CN 2007 (OJ 2006, No. L 302/1), the CN 2012 (OJ 2011, No. L 282/1) and the CN 2017 (OJ 2016, No. L 294/1 as amended by the Reg. EU 2016/1956, OJ 2016, No. L 301/5).

All notes are presented in four tables according to their placement (Tables 1–4; these tables are provided in the appendix). The notes of the four versions of the CN have been collated and are presented in Table 5.

2. Results

Table 5: Development of all notes, subheading notes and additional notes (CN 2002–CN 2017)

HS/CN	Notes	Subheading notes	Additional notes	All notes (cumulative)
2002	387	51	109	547
2007	380	56	98	534
2012	390	64	97	551
2017	386	63	109	558
Range	10 (380–390)	13 (51–64)	12 (97–109)	24 (534–558)

The counts of the four versions of the HS/CN differ significantly:

HS 2002/CN 2002

- 547 notes were identified: 387 notes, 51 subheading notes and 109 additional notes.
- No notes appear in front of sections V, VII–VIII, IX–X, XII–XIV, XVIII–XXI or Chapter 50.
- Subheading notes appear in front of Chapters 81 and 88 only (there are no notes or additional notes before these chapters).
- The largest number of notes and subheading notes can be observed in front of Chapter 48, with 19 notes.
- 75 out of 109 additional notes (69%) are concerned with Chapters 1–24 (agricultural goods); these notes are mostly concerned with the legal definition of certain meanings and the definition of special methods for the analysis of goods.

HS 2007/CN 2007

- 534 notes were identified: 380 notes, 56 subheading notes and 98 additional notes.
- No notes appear in front of sections III, VIII–X, XII–XIV, XVIII–XXI or Chapter 50.
- Subheading notes appear in front of Chapters 52, 81 and 88 only (there are no notes or additional notes in front of these chapters).
- Additional notes appear in front of Chapter 53 (but there are no notes or subheading notes in front of Chapter 53).
- The largest number of notes and subheading notes can be observed in front of Chapter 48, with 19 notes.
- 62 out of 98 additional notes (63%) are concerned with Chapters 1–24 (agricultural goods); these notes are mostly concerned with the legal definition of certain meanings and the definition of special methods for the analysis of goods.

HS 2012/CN 2012

- 551 notes were identified: 390 notes, 64 subheading notes and 97 additional notes.
- No notes appear in front of sections III, V, VIII–X, XII–XIV, XVIII–XXI or Chapter 50.
- Subheading notes appear in front of Chapters 81 and 88 only (there are no notes or additional notes in front of these chapters).

- Additional notes appear in front of Chapter 53 only (there are no notes or subheading notes before Chapter 53).
- The largest number of notes and subheading notes can be observed in front of section VI and Chapter 48 (with 19 notes).
- 58 out of 97 additional notes (60%) are concerned with Chapters 1–24 (agricultural goods); these notes are mostly concerned with the legal definition of certain meanings and the definition of special methods for the analysis of goods.

HS 2017/CN 2017

- 557 notes were identified: 385 notes, 63 subheading notes and 109 additional notes.
- No notes appear in front of sections III, V, VIII–X, XII–XIV, XVIII–XXI or Chapter 50.
- Subheading notes appear in front of Chapters 52, 81 and 88 (there are no notes and additional notes in front of these chapters).
- Additional notes are written in front of Chapter 53 only (there are no notes or subheading notes in front of Chapter 53).
- The largest number of notes (notes, subheading notes and additional notes) can be observed in front of Chapter 22, with 16 notes.
- The largest number of additional notes can be observed in front of Chapters 22 with 13.
- 70 out of 109 additional notes (64%) are concerned with chapters 1–24 (agricultural goods); these notes are mostly concerned with the legal definition of certain meanings and the definition of special methods for the analysis of goods.

3. Discussion

There is no correlation between the overall number of notes and their content or length. Some notes are very long but are counted as one note due to their further subdivision by letters (e.g. additional note 2 of Chapter 2, note 4 of section XI, note 1 of Chapter 72, and note 5 of Chapter 84).

The number of notes has changed in every mayor HS/CN iteration (2002, 2007, 2012, 2017). Table 5 shows the development of notes, subheading notes and additional notes in all four versions and it sums up the overall numbers and shows the range of all notes.

For the new HS 2017/CN 2017 versions, there are 558 notes, 1,222 headings and 9,528 CN subheadings, which underlines the complexity of the rules for customs classification of goods in the HS nomenclature, worldwide tariff schemes, and the combined nomenclature (and the Common Customs Tariff) of the EU.

From HS 2017, there are 386 notes that remain in force worldwide for the next five years, until the next HS revision is due (2022), which means that this number of notes is more or less constant (range: 10 notes). The same applies for the 63 subheading notes of HS 2017 (range: 13 subheading notes). Furthermore, as at December 2016 there were 109 additional notes of the CN, which are valid only within the EU. The number of these additional notes varies constantly as they can be introduced, changed or cancelled independently by the European Commission—which happens regularly during a year (see Figure 2 in Weerth, 2008a, p. 114). The four HS/CN versions that were analysed for this paper had varying numbers of additional notes: from 109 (CN 2002 and CN 2017) to only 97 and 98 (CN 2012, CN 2007 respectively). The range of additional notes falls within a range of 12.

The EU has the option, through the additional notes mechanism, to influence the definition of certain goods and methods of analysis, and therefore the classification of goods within the CN and the CCT. But the EU is not allowed to alter the meaning of HS headings or HS subheadings. The legal regulation of methods of analysis for certain goods and the definition of non-defined legal terms is helpful and understandable. However, these alterations should be affirmed by the World Customs Organization (WCO) as they apply

worldwide (within the HS nomenclature). The addition of notes that only apply to the EU (definitions and methods of analysis) may lead to further obstruction of world trade (non-tariff measures) and distortions in the application of the HS nomenclature (e.g., when there are different views about the use of certain terms in South America or Asia and the EU). The same applies for methods of analysis—these should be determined worldwide within the HS nomenclature.

Additional notes represent a subtle method of managing the trade policy of the EU, which is used for an EU-friendly application of the CCT (e.g., by using definitions of certain goods or terms or the definition of methods for analysing certain goods).

Between 60 and 64 per cent of the additional notes are concerned with sections I–IV and Chapters 1–24 (agricultural goods); apparently, the EU has a strong interest in this agricultural sector and applies the nomenclature and the CCT in a strict and rigid way. These observations are in line with results of the latest World Trade Organization (WTO) trade policy review of the EU, which notes that the highest measures of EU tariff protection are applied within the agricultural sector—the EU is still applying a high level of protectionism regarding agricultural products: the normal average tariff is 6.5 per cent *ad valorem* but the average agricultural tariff is 14.4 per cent *ad valorem* (which has fallen from 15.2 per cent in 2011 and 17.8 per cent in 2008) (WTO, 2015).

Examples of the continuous change of the notes are the notes of Chapter 27 (Table 6) and Chapter 85 (Table 7).

Table 6: Changes of all notes of Chapter 27 from the HS/CN 2002 to the HS/CN 2017

HS/CN	Notes	Subheading Notes	Additional Notes
HS/CN 2002	3	4	5
HS/CN 2007	3	4	6
HS/CN 2012	3	5	6
HS/CN 2017	3	5	2

Table 7: Changes of all notes of Chapter 85 from the HS/CN 2002 to the HS/CN 2017

HS/CN	Notes	Subheading Notes	Additional Notes
HS/CN 2002	7	2	2
HS/CN 2007	9	1	2
HS/CN 2012	9	1	2
HS/CN 2017	10	1	3

C. Conclusions

Notes are a fundamental requirement for the customs classification of goods into a tariff scheme—they are the only legal basis in addition to the terms of the headings and subheadings according to the General Rules 1 and 6. The examination of all notes of HS 2017 and CN 2017 (CCT) has identified 386 notes, 64 subheading notes and 109 additional notes.

Notes and subheading notes are in force worldwide (in countries in which the HS applies) for a period of about five (or six) years, whereas additional notes are valid only in the EU and may be changed on a more regular basis. An examination of these changes in the years 2003–2006 shows that ten regulations introduced changes through additional notes (Weerth, 2008a, Figure 2).

By using additional notes the EU has an opportunity to influence the classification of goods (by using additional notes to define certain products better or to define special methods for analysing certain goods) and thereby to influence the classification of imported goods in the CN and the CCT. Additional notes represent a subtle and not publicly understood instrument for the management of the trade policy of the EC, with between 60 and 64 per cent of the additional notes relating to the agricultural sector (Chapters 1–24). It is considered that such alterations should be affirmed by the WCO and used worldwide (within the HS-nomenclature).

All in all, 558 notes were identified for HS/CN 2017: 386 notes, 64 subheading notes and 109 additional notes for the combined nomenclature and the CCT of the EU. The 558 notes are in addition to the 1,222 HS headings, 5,387 HS subheadings and 9,528 CN subheadings, which is proof of the complexity of the rules of the CCT, which contains more than 16,500 legal rules for the classification of goods. The numerous notes are a significant obstacle to the uniform use of a tariff scheme for economic operators, customs officers and financial courts because of their placement in front of a section or chapter (without a direct link within the text of the heading or subheading) and, depending on one's interpretation, may lead to the possibility of non-uniform application of the CCT.

Appendix: Tables 1 to 4

Table 1: All notes, subheading-notes (HS 2002) and additional notes (CN 2002)

Section/ Chapter	Note	Subheading- Note	Additional Note
I	2	-	-
II	1	-	-
III	4	1	4
IV	1	-	-
V	-	-	-
VI	3	-	-
VII	-	-	-
VIII	-	-	-
IX	-	-	-
X	-	-	-
XI	13	2	-
XII	-	-	-
XIII	-	-	-
XIV	-	-	-
XV	8	-	-
XVI	5	-	3
XVII	5	-	2
XVIII	-	-	-
XIX	-	-	-
XX	-	-	-
XXI	-	-	-
01	3	-	-
02	1	-	7
03	2	-	-
04	4	2	2
05	4	-	-
06	2	-	-
07	4	-	1
08	3	-	3
09	2	-	1
10	2	1	2
11	3	-	2
12	5	1	-
13	1	-	-
14	4	-	-
15	4	1	4

International Network of Customs Universities

16	2	2	2
17	1	1	7
18	2	-	2
19	4	-	3
20	6	3	8
21	3	-	6
22	3	1	11
23	1	1	5
24	1	-	-
25	4	-	-
26	3	2	-
27	3	4	5
28	8	-	1
29	8	-	1
30	4	-	1
31	6	-	-
32	6	-	-
33	4	-	-
34	5	-	-
35	2	-	1
36	2	-	-
37	2	-	2
38	6	-	1
39	11	-	2
40	9	-	-
41	3	-	-
42	3	-	1
43	5	-	-
44	6	1	2
45	1	-	-
46	3	-	-
47	1	-	-
48	12	7	-
49	6	-	-
50	-	-	-
51	1	-	-
52	1	-	-
53	1	-	-
54	2	-	-
55	1	-	-
56	4	-	-
57	2	-	1

58	7	-	-
59	7	-	-
60	3	-	-
61	10	-	3
62	9	-	2
63	3	-	-
64	4	1	2
65	2	-	-
66	2	-	-
67	3	-	-
68	2	-	-
69	2	-	-
70	5	1	-
71	11	3	-
72	3	2	1
73	2	-	-
74	1	1	-
75	1	2	-
76	1	2	-
78	1	1	-
79	1	1	-
80	1	1	-
81	-	1	-
82	3	-	-
83	3	-	-
84	8	2	2
85	7	2	2
86	3	-	-
87	4	-	-
88	-	1	-
89	1	-	3
90	7	-	1
91	4	-	-
92	2	-	-
93	2	-	-
94	4	-	-
95	4	-	-
96	4	-	-
97	5	-	-
All	387	51	109

Table 2: All notes, subheading-notes (HS 2007) and additional notes (CN 2007)

Section/ Chapter	Note	Subheading- Note	Additional Note
I	2	-	-
II	1	-	-
III	-	-	-
IV	1	-	-
V	-	-	-
VI	3	-	-
VII	2	-	-
VIII	-	-	-
IX	-	-	-
X	-	-	-
XI	13	2	-
XII	-	-	-
XIII	-	-	-
XIV	-	-	-
XV	8	-	-
XVI	5	-	3
XVII	5	-	2
XVIII	-	-	-
XIX	-	-	-
XX	-	-	-
XXI	-	-	-
01	1	-	-
02	1	-	7
03	2	-	-
04	4	2	1
05	4	-	-
06	2	-	-
07	4	-	1
08	3	-	3
09	2	-	1
10	2	1	2
11	3	-	2
12	5	1	-
13	1	-	-
14	3	-	-
15	4	1	4
16	2	2	2
17	1	1	7

18	2	-	2
19	4	-	2
20	6	3	8
21	3	-	4
22	3	1	11
23	1	1	5
24	1	-	-
25	4	-	-
26	3	2	-
27	3	4	6
28	8	-	-
29	8	2	-
30	4	-	1
31	6	-	-
32	6	-	-
33	4	-	-
34	5	-	-
35	2	-	1
36	2	-	-
37	2	-	2
38	6	2	-
39	11	2	1
40	9	-	1
41	3	-	-
42	3	-	1
43	5	-	-
44	6	1	2
45	1	-	-
46	3	-	-
47	1	-	-
48	12	7	-
49	6	-	-
50	-	-	-
51	1	-	-
52	-	1	-
53	-	-	2
54	2	-	-
55	1	-	-
56	4	-	-
57	2	-	-
58	7	-	-
59	7	-	-

International Network of Customs Universities

60	3	-	-
61	10	-	3
62	9	-	2
63	3	-	-
64	4	1	-
65	2	-	-
66	2	-	-
67	3	-	-
68	2	-	-
69	2	-	-
70	5	1	-
71	11	3	-
72	3	2	1
73	2	-	-
74	1	1	-
75	1	2	-
76	1	2	-
78	1	1	-
79	1	1	-
80	1	1	-
81	-	1	-
82	3	-	-
83	2	-	-
84	9	2	2
85	9	1	2
86	3	-	-
87	4	-	-
88	-	1	-
89	1	-	3
90	7	-	1
91	4	-	-
92	2	-	-
93	2	-	-
94	4	-	-
95	5	-	-
96	4	-	-
97	5	-	-
All	380	56	98

Table 3: All notes, subheading-notes (HS 2012) and additional notes (CN 2012)

Section/ Chapter	Note	Subheading- Note	Additional Note
I	2	-	-
II	1	-	-
III	-	-	-
IV	1	-	-
V	-	-	-
VI	3	-	-
VII	2	-	-
VIII	-	-	-
IX	-	-	-
X	-	-	-
XI	12	7	-
XII	-	-	-
XIII	-	-	-
XIV	-	-	-
XV	15	-	-
XVI	5	-	3
XVII	5	-	2
XVIII	-	-	-
XIX	-	-	-
XX	-	-	-
XXI	-	-	-
01	1	-	-
02	1	-	7
03	2	-	-
04	4	2	1
05	4	-	-
06	2	-	-
07	4	-	-
08	3	-	3
09	2	-	1
10	2	1	2
11	2	-	-
12	5	1	-
13	1	-	-
14	3	-	-
15	4	1	2
16	2	2	2
17	1	2	7

International Network of Customs Universities

18	2	-	2
19	4	-	3
20	6	3	8
21	3	-	4
22	3	1	11
23	1	1	5
24	1	1	-
25	4	-	-
26	3	2	-
27	3	5	6
28	8	1	1
29	8	1	-
30	4	-	1
31	6	-	-
32	6	-	-
33	4	-	-
34	5	-	-
35	2	-	1
36	2	-	-
37	2	-	2
38	7	2	-
39	11	2	1
40	9	-	1
41	3	-	-
42	4	-	1
43	5	-	-
44	6	2	2
45	1	-	-
46	3	-	-
47	1	-	-
48	12	7	-
49	6	-	-
50	-	-	-
51	1	-	-
52	1	-	-
53	-	-	1
54	2	-	-
55	1	-	-
56	4	-	-
57	2	-	1
58	7	-	-
59	7	-	-

60	3	-	-
61	10	-	3
62	9	-	2
63	3	-	-
64	4	1	2
65	2	-	-
66	2	-	-
67	3	-	-
68	2	-	-
69	2	-	-
70	5	1	-
71	11	3	-
72	3	2	1
73	2	-	-
74	1	1	-
75	1	1	-
76	1	2	-
78	1	1	-
79	1	1	-
80	1	1	-
81	-	1	-
82	3	-	-
83	2	-	-
84	9	2	2
85	9	1	2
86	3	-	-
87	4	-	-
88	-	1	-
89	1	-	3
90	7	-	1
91	4	-	-
92	2	-	-
93	2	-	-
94	4	-	-
95	5	1	-
96	4	-	-
97	5	-	-
All	390	64	97

Table 4: All notes, subheading-notes (HS 2017) and additional notes (CN 2017)

Section/ Chapter	Note	Subheading- Note	Additional Note
I	2	-	-
II	1	-	-
III	-	-	-
IV	1	-	-
V	-	-	-
VI	3	-	-
VII	2	-	-
VIII	-	-	-
IX	-	-	-
X	-	-	-
XI	14	2	-
XII	-	-	-
XIII	-	-	-
XIV	-	-	-
XV	8	-	-
XVI	5	-	3
XVII	5	-	2
XVIII	-	-	-
XIX	-	-	-
XX	-	-	-
XXI	-	-	-
01	1	-	-
02	1	-	7
03	2	-	2
04	4	2	4
05	4	-	-
06	2	-	-
07	4	-	-
08	3	-	3
09	2	-	1
10	2	1	2
11	2	-	-
12	5	1	-
13	1	-	1
14	3	-	-
15	4	1	4
16	2	2	2
17	1	2	8

18	2	-	2
19	4	-	3
20	6	3	9
21	3	-	4
22	3	1	13
23	1	1	5
24	1	1	-
25	4	-	-
26	3	2	-
27	3	5	2
28	8	1	1
29	8	2	-
30	4	2	1
31	6	-	-
32	6	-	-
33	4	-	-
34	5	-	-
35	2	-	1
36	2	-	-
37	2	-	2
38	7	4	-
39	11	2	1
40	9	-	1
41	3	-	-
42	4	-	1
43	5	-	-
44	6	1	2
45	1	-	-
46	3	-	-
47	1	-	-
48	12	1	-
49	6	-	-
50	-	-	-
51	1	-	-
52	-	1	-
53	-	-	1
54	2	-	-
55	1	-	-
56	4	-	-
57	2	-	1
58	7	-	-
59	7	-	-

International Network of Customs Universities

60	3	1	-
61	10	-	3
62	9	-	2
63	3	1	-
64	4	1	2
65	2	-	-
66	2	-	-
67	3	-	-
68	2	-	-
69	2	-	-
70	5	1	-
71	11	3	-
72	3	2	1
73	2	-	-
74	1	1	-
75	1	2	-
76	1	2	-
78	1	1	-
79	1	1	-
80	1	1	-
81	-	1	-
82	3	-	-
83	2	-	-
84	9	4	2
85	10	1	3
86	3	-	-
87	4	-	-
88	-	1	-
89	1	-	3
90	7	-	1
91	4	-	-
92	2	-	-
93	2	-	-
94	4	-	1
95	5	1	-
96	4	-	1
97	5	-	1
All	386	63	109

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Note

- 1 Council regulation [EEC] No. 2658/87 as of 23 July, 1987 on the tariff and statistical-combined nomenclature and on the Common Customs Tariff, OJ EEC 1987 No. L 256/1, Reg-CN.

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