

The Changing Nature of the Harmonized System – One Perspective

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The Harmonized System (HS) Nomenclature is an international descriptive listing of products and their numerical codes, that has been developed by the Harmonized System Committee (HSC), itself a body that forms part of the World Customs Organization (WCO). The HS Nomenclature forms the basis of customs tariffs for about 95 per cent of the world's countries.

Unlike its predecessor, the Customs Co-operation Council Nomenclature (CCCN), which was largely a static document, the authors of the HS have built into it a system of continual amendment or review. The review process is an essential requirement, as the HS needs to remain up to date with the constant change to world trade patterns, which are the result of either varying product demand or the advancement of product technology. The HS is a product classification nomenclature, therefore it is imperative that its structure – the headings, subheadings and legal notes – keep pace with and reflect international trade and production. Its classification system is of use only if it keeps in step with technological progress.

The authors of the HS envisaged this document as a nomenclature for the overall movement of goods. This contrasted with the CCCN, which was essentially a customs document, largely written by customs officers, for customs purposes – that being to form the basis for national tariff documents. Obviously, the creation of national tariffs has been the prime use of the HS, but other uses were to include it being a document for the collection of statistics, and also as a means of identification of goods for the private/commercial sectors, as goods are transported from origin to destination.

The HS contains six classification rules, referred to in this document as the Interpretative Rules. Rules 1 and 6 relate to classifying goods by their descriptions within the headings and subheadings, together with any relevant legal notes. There are obvious advantages in being able to classify goods as they are so described within headings and subheadings as opposed to having to have recourse to some of the remaining classification rules. Interpretative Rules 2 and 3, in particular, which concern the treatment of goods that are imported in a condition that is not immediately recognisable within the structure of the Nomenclature, can prove difficult as they are open to subjective interpretation.

As such, it is a continual aim of the authors of the HS that as many goods as possible be classified under the directives of Interpretative Rules 1 and 6. It is estimated that over 95 per cent of the HS classifications are so classified.

In an effort to keep pace with change, the HS has a five-year review cycle. The review cycles may look at the Nomenclature as a whole, or they may address certain sectors, or particular areas – for example, a review period may focus on heavy machinery classifications or on computer related equipment.

The review cycle is a very intensive process. It involves detailed submissions and consultations between the HSC, its sub-committees and interested parties outside the WCO, both government and private. Amendments also need to be approved by at least a two-thirds majority of the HSC. At present the HSC has a membership of 159 countries and the European Union (EU). All these members may vote on a particular issue if they so wish. In addition, a further complication may lie with the EU, as it has a membership of some 27 countries. It therefore needs to determine its position between its members before it casts its vote. It all adds up to a time-consuming procedure.

Despite these perceived shortcomings the review process is a major feature of the success of the HS. Since the advent of the Harmonized System, there have been five major reviews to the document.

The initial review in 1996 almost solely related to goods of economic concern, being those that reflected either varying product demand or the advancement of product technology. National tariffs and their duty rates were amended accordingly.

It is suggested that a variance to this attitude occurred with the second review in 2002, when the Third Edition of the HS included changes to specifically include products of an environmental concern. These changes included goods that were endangered species of flora and fauna subject to the Convention on International Trade in Endangered Species. In addition, the changes also included specific categories of waste controlled by the Basel Convention, which gave rise to classifications for industrial waste (heading 38.25) and waste pharmaceuticals (subheading 3006.92) together with several legal notes that defined these terms.

Although changes that reflect either varying product demand or the advancement of product technology still account for most changes, recent reviews have also included changes relating to environmental concerns. The fourth review (Fifth Edition of the HS), which was implemented in 2012, included the provision of separate identification of certain hazardous chemicals and pesticides, and the separate identification of certain ozone-depleting substances that are covered by the Rotterdam Convention and Montreal Protocol, respectively. Further identification of these products, the majority of which are classified within the headings and subheadings of Chapters 28 and 29, was continued in the Sixth Edition of the HS (2017), together with certain products covered by the Chemical Weapons Convention. The Sixth Edition also included separately identifying certain antimalarial products.

Allocating goods of environmental concern their own specific classifications has a number of benefits for the global community. It provides a means of tracking their movement and it provides a platform for subsequent profiling purposes.

The current review, which will result in the Seventh Edition of the HS, will enter into force on and from 1 January 2022. It is anticipated that many customs administrations, and indeed all those of the major trading nations, will have incorporated the amendments into their tariffs, and these documents will also be operative on and from that date.

The HS contains about 5,300 product description codes constituting some 1,240 headings, and subheadings, a number which is not all that different to the first HS document. The latest review contains about 350 sets of amendments. As with previous reviews, not all the amendments will result in additional codes – some will replace current codes, while others relate to the deletions of codes.

As with previous reviews the Seventh Edition of the Nomenclature continues to recognise products that are of environmental and social concern, as well as those that reflect trading patterns and product technology.

Amendments to the Seventh Edition of the Nomenclature include dedicated classification codes for:

- new forms of nicotine-based products
- mixtures containing halogenated derivatives of methane, ethane or propane listed under the Kigali Amendment of the Montreal Protocol
- certain chemicals listed under the Chemical Weapons Convention
- certain hazardous chemicals listed under the Rotterdam Convention
- certain persistent organic pollutants listed under the Stockholm Convention

- placebos and clinical trial kits for medical research
- machines for additive manufacturing
- smartphones
- flat panel display modules
- electrical and electronic waste and scrap
- drones.

Many of these products have accompanying definitions that are set out in the form of legal notes, which will be located within their respective areas.

The above products are examples of the changes that will be introduced on 1 January 2022. Those wishing additional information are urged to visit the Nomenclature and Classification of Goods section, located within the WCO website.

The next review is scheduled for implementation on 1 January 2027. The review period for the Eighth Edition began as soon as WCO Council approved the Seventh Edition, which was in June 2019.

What changes may we see in the near future? One that immediately springs to my mind stems from a tariff course that I tutor. One of the discussion exercises involves possible changes to the HS. A student indicated that in view of the current global crisis, perhaps face masks should be given their own separate identity. At present the student considers the goods are classified within heading 63.07, which is the residual classification for articles of textile fabric. The HSC agrees with this classification. The HSC also considers that if made of paper or cellulose, the masks are classified within heading 48.18. This means that similar goods are classified in different headings if they are made of different materials – not an ideal situation.

Should this be an issue for future HSC consideration, perhaps a satisfactory solution would be to follow the example that it has done with sanitary products and create a separate heading within Chapter 96. This chapter covers an array of largely unrelated miscellaneous manufactured articles including pens, smoking pipes, brushes, combs, stamp pads and tailors' mannequins, and it was considered by the HSC as an appropriate location to insert a heading for these goods. The classification of sanitary products had long been an issue, in that they were classified according to their constituent material, which meant that essentially the same product was classified in different headings. In providing a single heading for these goods, regardless of composition, the HSC created a situation whereby the goods were classified under the directives of Interpretative Rule 1, that is, how they are so described, thereby obviating the need to consider recourse to reliance on material and/or essential character. This may be a solution for face masks, or indeed for PPE generally.

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