

# HS 2007: NOTES OF THE TARIFF NOMENCLATURE AND THE ADDITIONAL NOTES OF THE EC

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## **Abstract**

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The fundamental rules for the classification of goods into a customs tariff which complies with the Harmonized System for the Description and Coding of Goods (HS) are according to General Rule 1, the six general rules of classification, the terms of headings and the notes (and according to General Rule 6 the terms of subheadings and subheading notes). The rules of the tariff schedule are complex, and whilst the overall numbers of headings and subheadings are known, the notes of the HS-nomenclature, the combined nomenclature (CN) and the Common Customs Tariff (CCT) of the European Community (EC) have not been examined in a systematic way. This paper identifies all notes (and subheading notes) which are in force worldwide as at HS 2007 (for sections and chapters) and examines also the sections and chapters for which the EC has established further so-called ‘additional notes’, which are valid only within the EC.

The HS 2007 contains 380 notes and 56 subheading notes which are valid worldwide, and the EC has added 98 additional notes within the CN and the CCT (as of May 2007). The 534 notes that accompany the 1,221 HS-headings, 5,052 HS-subheadings and 9,720 CN-subheadings are proof of the complexity of the rules of the CCT which contains more than 16,500 legal rules for the classification of goods.

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## **A. Introduction**

### **1. Fundamentals of Tariff Classification**

Customs classification of goods into the tariff scheme of the HS-nomenclature is complex and depends on numerous rules: according to General Rule 1 that are solely the terms of headings and notes; and according to General Rule 6, that are the terms of subheadings and subheading notes (Weerth 2008a).

### **2. Legal basis**

These compounds of the HS-nomenclature are identical in more than 200 countries and economic regions which are using the HS-nomenclature as the basis for their tariff schemes and economic statistics, 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 do not contradict the system and structure of the HS-nomenclature. Within the EC,

the nomenclature is further divided by the so-called ‘combined nomenclature’,<sup>1</sup> 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 EC.

### 3. Scope of rules HS 2007 / CN 2007

But how many rules have to be regarded for the classification of goods into the combined nomenclature (CN) and the Common Customs Tariff (CCT) of the EC?

The nomenclature of the HS 2007 comprises 21 sections, 96 chapters (chapters 01-97, chapter 77 is not in use), 1,221 HS-headings (a further 34 headings are not in use [Weerth 2007]), and 5,052 HS-subheadings (Statistisches Bundesamt 2007).

The Reg-CN incorporates fully the HS-nomenclature and adds 9,720 CN-subheadings (Statistisches Bundesamt 2007).

Within the HS-nomenclature there are notes and subheading notes in front of sections and chapters. The EC applies these HS-notes and HS-subheading notes and furthermore, adds so-called ‘additional notes’.

There are three different types of notes within the Common Customs Tariff of the EC of which two types are valid worldwide (HS-notes and HS-subheading notes) whereas the third type, the so-called ‘additional notes’ of the CN, are only valid within the EC.

The notes of the HS-nomenclature have not previously been in the focus of systematic research and have only been examined in depth twice (Theis 2003; Weerth 2004), with both examinations attempting to classify the notes in terms of aims, contents and usage.

## B. Examination of the notes

### 1. Material examined and methods

This examination was conducted with the CN 2007 (OJ 2006, No. L 302/1).

All notes were identified and are shown in a figure according to their placement (Figure 1). Furthermore, all introductions, changes and cancellations of additional notes were identified with the help of the Official Journal of the European Union (OJ).

### 2. Results

The results are shown in Figure 1.

All in all, 534 notes were identified: 380 notes, 56 subheading notes and 98 additional notes.

No HS notes or subheading notes appear in front of sections III, VIII, IX, X, XII, XIII, XIV, XVIII, XIX, XX, XXI or chapters 50 and 53.

Only subheading notes appear in front of chapters 52, 81 and 88 (there are no notes at all). Only additional notes appear in front of chapter 53 (notes and subheading notes do not appear there). The largest number of notes and subheading notes appear in front of chapter 48 (19 notes).

Sixty-two of 98 additional notes (63%) relate to chapters 01-24 (agricultural goods). Mostly these notes are concerned with the legal definition of certain meanings and the definition of special methods for the analysis of goods.

Figure 1: All notes, subheading notes (HS 2007) and additional notes (CN 2007).  
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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	-	-
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

### 3. Discussion

The overall number of notes does not indicate anything about their content or length. Some notes are very long but are counted as one note due to their further subdivision by letters (for example, additional note 2 of chapter 02, note 4 of section XI, note 1 of chapter 72, and note 5 of chapter 84).

Five hundred and thirty-four different notes, 1,221 positions and 9,720 CN subheadings underline the complexity of the rules for customs classification of goods in the HS-nomenclature, tariff schemes worldwide and in the combined nomenclature (and the Common Customs Tariff) of the EC.

Three hundred and eighty notes of HS 2007 will remain in force worldwide for at least the next four years until the next HS revision is due in 2011-2012. The same applies for 56 subheading notes of HS 2007. Furthermore, in May 2007, there were 98 additional notes of the CN, which were valid within the EC only. The number of these additional notes varies, because they can be introduced, changed, or cancelled independently by the European Commission – something which may occur regularly during the course of a year (Figure 2).

Figure 2: *Changes to additional notes during the years of 2003-2006*

Year	Notes Changed
2003	1
2004	5
2005	0
2006	4
All	10

For the CN, which is re-published each year in the OJ of the EU (about 900 pages), there were ten introductions, changes or cancellations of additional notes within the years 2003 to 2006. However, it remains uncertain how often additional notes will be changed in future publications of the CN nomenclature.

The EC has the option, with the help of the additional notes, to influence the definition of certain goods and methods of analysis which, consequently, means the classification of goods within the CN and the CCT. But the EC 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 very helpful and understandable, however, these alterations should be affirmed by the WCO and be used worldwide (within the HS-nomenclature). The addition of notes (definitions and methods of analysis) which apply only within the EC may lead to further obstruction of world trade (non-tariff measures) and distortions of the applications of the HS-nomenclature (for example, when there are different views about the use of certain terms in Southern America, or Asia and the EC; the same applies to analysing methods – these should be determined worldwide within the HS-nomenclature).

Additional notes are subtle and not publicly understood, poorly valued instruments for the management of the trade policy of the EC, because they are being used for an EC-friendly application of the CCT (for example, by using definitions of certain goods or terms or the definition of methods for analysing certain goods).

Sixty-three per cent of the additional notes relate to chapters 01-24 (agricultural goods) – apparently the EC has a strong interest in this agricultural sector to apply the nomenclature and the CCT in a rather strict and rigid way. These observations are in line with results of the WTO Trade policy review, that is, that the highest measures of EC-Tariff protection are applied within the agricultural sector (WTO 2007) – the EC is still applying a strong protectionism regarding agricultural products.

## C. Conclusions

Notes are of fundamental meaning 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 General Rules 1 and 6.

The EC has, with the help of the additional notes, 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.

An examination of all notes of the HS 2007 and the CN 2007 (CCT) has identified 380 notes, 56 subheading notes and 98 additional notes for the combined nomenclature and the CCT of the EC. The 534 accompany the 1,221 HS-headings, 5,052 HS-subheadings and 9,720 CN-subheadings; proof of the complexity of the rules of the CCT which contain more than 16,500 legal rules for the classification of goods. The numerous notes are an obstacle to the uniform usage of a tariff scheme for economic operators, customs officers and courts. This is because of their placement in front of a section/chapter (without a direct link within the text of the heading or subheading). They present – depending on the point of view – the possibility or risk of non-uniform application of the CCT.

## Endnote

- 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, Official Journal of the European Union (OJ) EEC 1987, No. L 256/1, Reg-CN.

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