



HARMONIZED SYSTEM  
COMMITTEE

-  
25<sup>th</sup> Session  
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NC0175E1  
(+Annexes I and II)  
O. Eng.

Brussels, 15 March 2000.

## SURVEY ON THE NON-APPLICATION OF HSC CLASSIFICATION DECISIONS

(Item III.1 on Agenda)

### Reference documents :

99NL724E - LP/MR – letter to all HS Contracting Parties  
NC0100E1 (HSC/24)  
NC0152E1 (HSC/24)  
NC0156E1 (HSC/24)

NC0160E1, Annexes C/3 and L (HSC/24 – Report)  
SP0021E1 (PC/42)  
SP0025E2 (PC/42 – Report)  
99NL1106 – Li/Gon – letter to all HS Contracting Parties

### I. BACKGROUND

1. At its 24<sup>th</sup> Session, the Harmonized System Committee examined the question of making its classification decisions binding on the basis of the report of the Informal Working Group, which had been held immediately before that Session. The Committee agreed with the Working Group's conclusion that more specific information was needed as to the extent and scope of non-application of HSC decisions by HS Contracting Parties before the Committee could proceed with its discussion of the issue. In this regard, the HSC endorsed the Working Group's recommendation that the Secretariat prepare a questionnaire to be sent to all Contracting Parties to the HS Convention.
2. At its 42<sup>nd</sup> Session, the Policy Commission took note of the developments concerning the above and welcomed the HSC's decision to conduct the survey on non-application of HSC decisions by Contracting Parties (see Doc. NC0167E1, Item II.2 on Agenda).

File No. 2669C

## II. CONTRACTING PARTIES' RESPONSES TO THE QUESTIONNAIRE

3. Taking into account the comments made in the HSC and the Working Group, the Secretariat prepared and sent out a questionnaire on non-application of HSC classification decisions (see Annex I to this document) on 25 November 1999 to all Contracting Parties to the HS Convention.

4. Responses to the questionnaire were received from the following 34 Contracting Parties (representing 47 administrations and the EC) :

Australia	Czech	Lithuania	Rwanda
Belarus	EC	Mauritius	Slovak
Botswana	Hungary	Myanmar	Swaziland
Brazil	India	New Zealand	Switzerland
Burkina Faso	Indonesia	Norway	Tunisia
Canada	Ireland	Peru	United States
China	Israel	Poland	Zimbabwe
Cote d'Ivoire	Japan	Romania	
Cyprus	Korea	Russia	

5. The Secretariat wishes to thank these Members for their co-operation.

6. As usual the EC replied on behalf of its 15 Member States, although Ireland also replied separately. Therefore, to reflect the fact that both the EC and its Member States are Contracting Parties to HS Convention, the suffix "(+15)" has been added wherever appropriate in the information provided in this document and the response by Ireland was not double reported.

7. A summary of the responses to the questionnaire is set out below. The details of the responses to all questions are reflected in Annexes I and II to this document.

### Question 2. Manner in which HSC classification decisions are applied

8. Twenty-four (+15) Members responded that HSC classification decisions were administratively binding; for most Members on Customs administrations only, but for some administrations (Swaziland and Switzerland) on economic operators as well. Six Members (Botswana, Burkina Faso, Hungary, Indonesia, Poland and Zimbabwe) indicated that HSC classification decisions were legally binding on all parties, including national courts. Two Members (Norway and Peru) stated that HSC classification decisions, which were treated as references only, were neither administratively nor legally binding. For one Member (Rwanda), the force of HSC decisions depended on when they were received by the Customs administration. If they were received before the revision of the national tariff, they would be incorporated as part of the tariff and thus have binding force. If they arrived after the publication of the national tariff, they would be the subject of an administrative circular, which would have administrative force only.

### Question 3. Time taken for implementation of HSC classification decisions

9. In cases where there were no problems regarding implementation, 17(+15) Members indicated that they implemented HSC classification decisions immediately or as soon as they

were approved. Ten Members suggested that more time was needed, which involved one month in one case, two or three months in most cases and up to six months or more in three cases.

10. In cases where there were problems regarding implementation, 13 Members indicated that more time was needed, ranging from three months to one year or more in many cases. For some the situation was less certain and the time needed for implementation depended on the decision taken by the authorities concerned.

Question 4. HSC classification decisions not applied over the past five years and reasons therefor

11. Twenty-seven (+15) Members declared that all HSC classification decisions had been implemented according to their knowledge, while four members stated that some decisions had not been implemented because they were contrary to national court decisions or long-standing practice.

Question 5. Volume of trade affected and economic consequences of these decisions

12. All Members responded either “not applicable” or that no study or estimate had been done in this regard, although one Member (Poland) pointed out that the economic consequences would be loss of revenue due to lower rates of duty and damage to domestic industry. Another Member (Korea) stated that decisions were applied irrespective of loss or damage. Israel reported that where loss of revenue or damage to industry was involved, changes to Customs duty were made.

Question 6. Problems experienced in respect of non-application by other Contracting Parties

13. Twenty-nine Members responded “no experience”, “no knowledge” or “not detected”. One Member (Hungary) mentioned that one Contracting Party had not applied the Classification Opinions and another (New Zealand) noted one case of delay in application. Without specifying the specific cases of non-application by other Contracting Parties, the EC (+15) stated that non-application of HSC classification decisions created difficulties in facilitating world trade, resulting in lack of legal certainty for exporters, lack of credibility in the role of the HSC and the WCO and unfavourable situations for producers in the country of importation. Japan observed that non-application could cause serious problems in cases of disputes.

Question 7. Ability or willingness to notify the Council of decisions not applied

14. Twenty-five (+15) Members indicated “yes”. The EC further pointed out that it would be desirable to provide for reciprocity by Contracting Parties. Canada stated that in its view, Customs administrations would always apply HSC classification decisions. If the courts overruled such decisions, then administrations should bring the matter to the attention of the HSC for clarification. On the other hand, five Members (Belarus, New Zealand, Romania, Swaziland and the United States) indicated “no”. Peru suggested that in order to achieve uniformity in classification, HSC classification decisions should be binding on Customs on the date established by the WCO without condition.
15. With regard to a Council Recommendation requesting HS Contracting Parties to notify the Council that they have not implemented an HSC classification decision, 28 (+15) Members were in favour of such a Recommendation. The EC further pointed out that this

would help to provide a legal status for this potential commitment and ensure reciprocity by all Contracting Parties. Canada suggested that Contracting Parties should be required to notify the WCO within a specified period of time (for example six months) if they do not implement an HSC classification.

16. On the other hand, two Members (New Zealand and the United States) were not in favour of such a Recommendation. Switzerland felt that before deciding to prepare a Council Recommendation, it would be best to thoroughly examine the matter to see whether such a Recommendation was in keeping with the Council's general objectives. This was because such a Recommendation could be considered self-contradictory in that it involved asking the Council to tolerate the fact that certain Contracting Parties did not implement nationally decisions that they had approved within the Council.
17. In respect of publicizing information regarding non-application on the WCO Web site, 27 (+15) Members responded "yes". The EC (+15) indicated that this would be in the interests of transparency. It was further remarked that commercial operators had the right to know about HSC decisions and to know which Contracting Parties did not apply them and the reasons for non-application, so as to be able to adapt to the every situation. Rwanda suggests that for those not yet having easy access to the Internet, such information should continue to be sent by post or fax. Brazil indicated that access to such information should only be given to Contracting Parties. New Zealand suggested the WCO Web site could register which Contracting Parties applied HSC classification decisions, for example, under the options of "all", "some", "none" or "accord respect". Canada, Switzerland and the United States responded "no". Switzerland also indicated that such information should be kept solely for Contracting Parties.

Question 8. Difference between entering a reservation and notification of non-application with regard to a decision

18. The responses from 27 Members revealed the different aspects regarding the complex nature of a reservation and a notification of non-application.
19. On the one hand, many Members pointed out that there existed a difference between a reservation and a notification of non-application, at least in terms of legal status.
20. In the view of these Members, a reservation was an established procedure provided for under Article 8 of the HS Convention. The procedure for reservations was available to all Contracting Parties so as to ensure that the decisions were fair and reasonable. It was stated that reservations should be entered only on the basis of a technical difference of opinion or when an HSC decision was considered to be in conflict with the principles of HS classification.
21. A reservation applied with regard to a decision taken by the HSC which had not yet been approved by the Council. It gave the reserving CP another opportunity to have an issue brought to the attention of the HSC. An immediate consequence of a reservation was that the HSC decision concerned would not be approved by the Council, which meant that the decision and its legal repercussions were deemed not to exist. In forcing further discussion, a reservation held up the HSC decision for all CPs.
22. Entering a reservation in no way prejudiced the subsequent implementation of a decision and the CP entering a reservation may apply the HSC decision concerned at a later stage (after reconfirmation by the HSC and subsequent approval by the Council).

23. One Member pointed out that, in entering reservations, uniformity in interpretation and application of the HS would not be achieved.
24. Notification of non-application was not provided in the HS Convention. It applied to a firm or effective HSC decision already approved by the Council. It was purely a national decision based on national interest considerations (e.g., revenue loss, court decisions) to refuse irrevocably or permanently to implement nationally such an HSC decision. It affected only that administration and the legal obligation under Article 8 of the HS Convention regarding re-examination of the decision did not arise as a result of a notification of non-application.
25. Non-application could be viewed as going against the inherent logic of the provisions of Article 8 regarding approval of HSC decisions or as a form of repudiation of the very spirit of the HS Convention. It was pointed out that, while there was no formal mechanism to bind CPs to HSC decisions, the non-application of them undermined the credibility of the Harmonized System and the authority of the Council in classification matters. It may also be considered as a form of circumvention of the intent of the HS Convention outlined in the Preamble to the HS Convention. It was further pointed out that non-application cast doubt on the HSC/Council's arbitration role in cases of disputes between CPs on the interpretation or application of the HS in accordance with Article 10 of the HS Convention. Extensive use of non-application might reduce the importance of the HSC decisions.
26. On the other hand, several Members stated that, as far as the immediate effect or practical result was concerned, a reservation and a notification of non-application were the same in that the Member concerned was able to classify a particular good by its choice, irrespective of the decision handed down by the HSC. The act of continual reservation was de-facto non-application.

Question 9. Application of decisions only to the specific article before the Committee or to the same class or kinds of articles

27. Nineteen Members (+15) indicated that they applied decisions to the same class or kind of articles, although many of them pointed out that whether an article was of the same class or kind would have to be decided on a case-by-case basis. Norway remarked that, although articles of the same class or kind were treated equally, the decisions were only relevant to the specific article in question. In this regard, Korea reported having difficulties regarding the definition of similarity. Belarus and Russia further commented that whether decisions should be applied to the same kind or class or kind of articles depended on the HSC's decision. If the HSC made a classification decision on the classification of a specific article and decided that it should be applied to the same class or kind of articles, such a decision should be applied accordingly.
28. Fourteen Members indicated that they applied decisions to the specific article only, although Israel explained that the specific articles may be produced by different firms and under different names. The United States stated that decisions would be applied as appropriate based on the circumstances presented.

Question 10. Problems encountered with other Contracting Parties concerning non-application of decisions to the same class or kind of articles

29. Thirty-two Members responded "no experience" or "no report received". Zimbabwe pointed out that while it had no problems in this regard, application to the same class or kind

of articles may create problems. Two Members (+15) suggested they had problems and the EC referred to four specific cases.

Question 11. Administrative/practical measures taken to ensure uniform application of decisions by regional/local offices

30. All Members reported that they maintained a mechanism by which HSC classification decisions were made known to regional/local offices. This was done by distribution of administrative circulars or notices or publishing the decisions in official journals or internal web site. Some Members did indicate that such practice might not apply to all decisions and might involve, in particular, cases where there were classification problems or disagreements with importers/exporters. Several respondents mentioned the input of decisions into Customs electronic tariff databases and stressed the role of a central classification unit in ensuring uniformity of classification within their Customs territories.

Question 12. Experience regarding national courts' consideration of HSC classification decisions

31. Twenty-three (+15) Members advised that their national courts did take HSC classification decisions into consideration when reviewing a case on classification, although many of these Members clarified that their courts were not bound to accept the decisions and the decisions were taken into consideration only as additional information or as an aid for interpreting the Nomenclature. On the other hand, Burkina Faso indicated that its courts took HSC decisions into consideration as part of the binding tariff. For Rwanda, the WCO was the only body of arbitration regarding classification matters permitted by national legislation and national courts were not competent in this area.
32. However, five Members advised that their courts did not or did not always take HSC decisions into consideration. Four Members reported that they had no experience in this regard since no classification cases had yet been brought to their courts.

Question 13. Other comments

33. Eleven Members (+15) provided additional comments.
- Brazil endorsed more general application of HSC decisions.
  - Canada raised the question of whether the term "ruling" should be used for a Classification Opinion to give more force to an HSC classification decision and suggested the complex issue had potential ramifications on the jurisdiction of national courts, bilateral agreements and WTO and required much more study.
  - Côte d'Ivoire recommended the adoption of a general Recommendation concerning the applicability of classification decisions in judicial procedures.
  - The EC emphasized uniform application as one of the functions legally established by the HS Convention and the desirability of transparency regarding the HSC's classification decisions.
  - New Zealand saw merit in all CPs at least "according respect" to HSC classification decisions but expressed its reservation as to making them binding on all or requiring notification of the administration's position on each decision.

- Peru was in favour of a Protocol to make HSC classification decisions binding on all bodies and recommended that the WCO publish annually an index of all HSC classification decisions.
- Rwanda wished to receive HSC classification decisions at the same time as relevant Amending Supplements to the Nomenclature so that they could be included in its national tariff to avoid unproductive disputes (ref. Paragraph 9).
- Swaziland supported CPs adopting recommendations taken by the HSC.
- Tunisia requested that all HSC documents be distributed before the session of the Committee and that Reports of the Committee be distributed in a manner that permitted administrations not attending the meeting a reasonable period for introducing the changes so as to avoid non-application.
- The United States emphasized that uniformity, transparency and consistency in the application and interpretation of the HS should be the objective of all CPs and the focus should be on how to make the decision-making process faster and more responsive to administrations and to the trade community.
- Zimbabwe took the opportunity to request the WCO's assistance to developing countries on laboratory matters.

### III. SECRETARIAT COMMENTS

34. Based on Members' responses to the questionnaire, the Secretariat believes that there does not appear to be a wide-spread problem of non-application of HSC decisions by Contracting Parties, in that most of them apply all or most of the decisions as administratively binding on Customs administrations. Most HSC classification decisions are applied by administrations on a timely basis if there are no problems regarding implementation and within a reasonable delay period needed to make any necessary adjustments if there are problems regarding implementation.
35. On the other hand, the Secretariat would also note that HSC classification decisions are not legally binding for most Contracting Parties and some administrations do fail to implement some of the decisions due to national constraints. In this connection, it would be relevant to recall that, for most Contracting Parties, national courts are not bound by HSC decisions. The courts only take these decisions into consideration as additional information and there always remain a possibility for them to rule otherwise on a classification issue.
36. Although some Members have expressed reservations, a clear majority of Members support uniform application and more transparency regarding the situation of the implementation of HSC decisions by Contracting Parties. It seems to be logical to predict that a large number of administrations would be in a position to accept a Council Recommendation to improve transparency regarding the implementation of HSC decisions. As pointed out by the EC in its response to Question 13, transparency is the basis for uniformity and will enable administrations, international organizations and economic operators to know about the firm decisions of the Committee and also their level of acceptance. A practice could be established to encourage Members to bring to the notice of the HSC/Council the fact that they are unable to apply an HSC classification decision.

37. In view of the above, the Committee is invited to examine the merit of a draft Council Recommendation to improve the transparency regarding implementation of HSC decisions by Contracting Parties. This would mainly involve requesting Contracting Parties to notify the Council if they have not implemented an HSC classification decision and having such information publicized on the WCO Web site.
38. In this connection, as summarized in paragraph 25 above, consideration should be given to the fact that the Recommendation as suggested may undermine the credibility of the Harmonized System and the authority of the Council in classification matters. In order to reduce such a risk to a minimum, the Secretariat considers that non-application of HSC decisions should be treated as interim measures and the administrations concerned should take action to remedy such unfavourable situations, as early as possible. Therefore, the Recommendation should urge administrations to indicate possible action to be taken to apply HSC decisions in the future.
39. Many administrations apply HSC decisions to the same class or kind of articles; it being understood that, whether articles are of the same class or kind must be decided on a case-by-case basis. On the other hand, a considerable number of administrations only apply HSC decisions to the specific article examined by the Committee.
40. The Secretariat envisages that the issue of the application of HSC decisions may give rise to future disputes among Member countries, particularly with regard to the application of the decision to the same class or kind of merchandise. One approach to dealing with this issue may be to create a permanent item on the Agenda of the HSC which would address issues related to the application or non-application of the decisions of the Committee.

#### IV. CONCLUSION

41. The Committee is invited to examine the comments and proposals made by the Secretariat, taking into account of the results of the survey on non-application of HSC decisions.

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**Questionnaire on the non-application of HSC classification decisions\***

1. Name of the administration.....
2. In what manner are HSC classification decisions applied in your Customs territory, i.e., are they made legally binding on all parties (including national courts), administratively binding on Customs or merely accorded the respect of your Customs administration ?
3. How long does it take for your administration to implement HSC classification decisions :  
If there are no problems regarding implementation ?  
  
If there are problems (e.g., duty rate changes) regarding implementation ?
4. Which HSC decisions have not been applied by your administration over the past five years and why ? Please provide detailed information.
5. What is the volume of trade affected by these decisions ? What economic consequences (e.g., loss of revenue due to lower duty rate, damage to the domestic industry) might have resulted from the application of these HSC decisions ?
6. What problems has your administration experienced in respect of the non-application of the HSC classification decisions by other Contracting Party administrations ? Please provide detailed information.

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\*By non-application of HSC classification decisions, it is meant that a Contracting Party does not take appropriate legal or administrative measures to ensure uniform implementation within its Customs territory of an HSC decision referred to in Article 7(b) of the HS Convention (i.e., "Classification Opinions or other advice") after such decision is approved by the Council under Article 8 of the HS Convention.

7. Would your administration be able or willing to notify the Council of the HSC decisions that are not applied ?

Yes

No

In this regard, are you in favour of a Council Recommendation requesting HS Contracting Parties to notify the Council whether they have not implemented an HSC classification decision ?

Yes

No

Do you think such information should be publicized on the WCO web site ?

Yes

No

8. What do you think would be the difference between entering a reservation with regard to an HSC classification decision and the notification of non-application of an HSC classification decision on the basis of a Council Recommendation ?
9. Do you apply HSC classification decisions only to the specific article before the Committee or to the same class or kind of articles ? In the latter case, please provide examples of the same class or kind.
10. Does your administration have problems with other Contracting Party administrations concerning non-application of HSC classification decisions to the same class or kind of articles ? If yes, please give detailed information.
11. What administrative/practical measures are taken by your administration to ensure uniform application of HSC classification decisions by your regional/local offices ?
12. Do your national courts take HSC decisions into consideration when reviewing a case on classification ?
13. Do you have any other comments to make regarding this issue ?

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**RESPONSES TO THE QUESTIONNAIRE ON NON-APPLICATION  
OF HSC CLASSIFICATION DECISIONS – PART I (QUESTIONS 1 – 6)**

Q1	Q2	Q3	Q4	Q5	Q6
Australia	Administratively binding on Customs	-Almost immediately -A number of months	None	Not available	No experience
Belarus	Not legally binding	Not less than 6 months	None	No study	No experience
Botswana	Legally binding on all parties	-Immediately -1 month	None	Cannot be determined	None
Brazil	Administratively binding	-3-6 months -3-6 months	None	Not applicable	-No information -HSC decisions binding in dispute between Mercosur Members
Burkina Faso	Treated as part of Section notes, etc., having binding characteristics	-Immediately -Determined on administrative decision or amendment to the tariff	None	None	None
Canada	Administratively binding	-As soon as approved -3 months to 1 year	None	Not available	Not aware
China	Administratively binding	-At time when decisions are considered to be accepted by all CPs -Limited period of	No record	No data	Never

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		delay for adjustment			
Côte d'Ivoire	Applied by circular of General Direction of Customs	Immediately applied	Several, esp. those due to inadequate circulation of information	No study	Various problems regarding disputes in classification and statistics
Cyprus	Administratively binding	-Up to 3 months -Up to 3 months	None	No estimation	Not available
Czech	Administratively binding on Customs	-3 months -3 months	Not available	Not available	Not available
EC(+15)	BTI - binding on Customs administrations but not on courts	-Immediately -6 months to 1 year	None	Not applicable	-Difficulties in facilitating world trade -Lack of legal certainty for exporters -Lack of credibility in the role of the HSC and the WCO -Unfavourable situations for producers in the importing country
Hungary	Published in form of legal measures	-3-4 months -1 year	None	Not available	1 CP has not taken the text of the Classification Opinions in force
India	Required to be followed by assessing officers, not legally binding	At earliest possible time after taking into consideration tribunal, court decisions, etc	Most decisions applied except when there are contrary decisions by courts, tribunals	No study	No

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Indonesia	Legally binding on all parties including national courts	Not long since decision to implement is made by the Ministry of Finance	None	No straight consequences	No
Ireland	Not legally binding	-Immediately -1 year in case of duty change	None	Not applicable	No information
Israel	Not legally binding	-Immediately -3 months	None	-No statistics -Where loss of revenue or damage to industry involved, changes to Customs duty made	No problems
Japan	Administratively binding on Customs administration	-2 or 3 months -1 year	No answer	No answer	Non-application would cause serious problems in cases of disputes
Korea	Administratively binding	Less than 6 months	None	No estimate, decisions applied irrespective of loss or damage	No specific difficulties
Lithuania	Administratively binding on Customs	-After publishing -Decision to be taken by authorities	No answer	No information	No
Mauritius	Administratively binding on Customs	-Immediately -No problem	None	Not applicable	None
Myanmar	Administratively binding	-1 month -Uncertain	No	Not applicable	No

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New Zealand	Not legally binding, persuasive when considering classification of like goods	-Centralised classification unit -Reclassification or restructuring the tariff	No immediate recollection	Not applicable	Not aware, although one case of delay noted
Norway	Applied, but neither administratively nor legally binding	-Immediately -6-12 months	None		
Peru	Neither legally nor administratively binding; decisions only treated as reference	Immediately accepted	None	No economic consequences	No
Poland	Legally binding on all parties (including national courts)	No problems in the main	None	-No estimate -Loss of revenue due to lower duty rate, damage to domestic industry	No knowledge
Romania	Applicable in accordance with the decision of the DG	No legal time limit	None	No analysis	No
Russia	Not legally binding, of persuasive and advisory nature	-6 months -12 months	None	No information	No experience
Rwanda	Legally or administratively binding depending on the timing when decisions are received	Depends on when the decisions are received and in the way described under Q2	None	Four decisions (which were implemented) allowed increase in duties of 300 million Rwanda Francs	Dispute with manufacturer on aluminium foil

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Slovak	Administratively binding	-3 months -1 year	Not aware	Not applicable	No experience
Swaziland	Administratively binding, including on clearing and forwarding agents	-As soon as possible -No problems	No	No volume of trade affected	None
Switzerland	Not directly applicable; once inserted in the National Compendium, binding for Customs administrations and Customs operators	-A maximum of 6 months -12 months or more	-2106.90.9; 2106.90.12; 2106.90.14; -2202.90.1	Unknown	None to date
Tunisia	Binding on Customs administration	As envisaged in the HS Convention	None	Not applicable	-Late Committee documents & reports
United States	Administratively binding	- After acceptance by the Council - Depends on the circumstances involved	44.18 (Drilled lumber)	No information	No information
Zimbabwe	Legally binding	-As soon as received unless need for clarification -Classification not affected by changes in duty rates	None	No analysis	Not detected

**RESPONSES TO THE QUESTIONNAIRE ON NON-APPLICATION  
OF HSC CLASSIFICATION DECISIONS – PART II (QUESTIONS 7, 9 –13)**

Q1	Q7	Q9	Q10	Q11	Q12	Q13
Australia	-Yes -Yes -Yes	Only to the specific article	No experience	Decisions are input into the Australian Customs electronic tariff precedent database, with which Customs officers are required to comply	Yes in terms of taking note of extraneous matter	No
Belarus	-No -Yes -Yes	Mainly to specific articles only*	No experience	Decisions are implemented by circulation of letters and instructions, mainly concerning the questions that arouse difficulties in classification and disagreement with importers/exporters	Yes but only as additional information	No
Botswana	-Yes -Yes -Yes	To specific article	No	Explanatory Notes are held by each regional office and all queries referred to head office for classification	No court case so far	No
Brazil	-Yes -Yes -Yes*	-Decisions only binding regarding specific articles; -Case-by-case	See Q6	Classification Opinions are translated and published in the Official Journal regularly which all regional/local offices receive	Considered as having subsidiary value like the Explanatory Notes	Yes*
Burkina Faso	-Yes -Yes -Yes	Generally to specific article	None	Customs notice distributing copies of HSC decisions	Yes, as part of the tariff and GIRs	No



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Canada	-Yes* -Yes* -No	-Only to specific articles -Will consider previous decisions when classifying articles of the same class or kind	None	EN amendments and Classification Opinions are distributed nationally. In some instances, consequential national classification policy directives are published. Decisions may become part of our national Database of classification rulings.	Yes, but only quasi-legal status. Courts have right to decide on the relevance of decisions in any court action	Yes*
China	-Yes -Yes -Yes	To the same class or kind of articles	No	Issue decisions to local Customs in an administrative manner	No	No
Côte d'Ivoire	Yes	To the same class or kind	Not up till now	All offices are informed by memos	Yes	Yes*
Cyprus	-Yes -Yes -Yes	To the same class or kind of articles. Examples given	No problem mentioned	All local offices are furnished with EN as well as Classification Opinions and by circular letters all officers are informed of new HSC classification decisions	Yes	No
Czech	-Yes -Yes -Yes	Only to specific article	Not available	Going to publish decisions on intranet web site and to issue internal regulation	Not for the time being	No
EC(+15)	-Yes* -Yes* -Yes*	To articles with same or similar characteristics or to same class or kind of articles	"Verosol"; Gasket, of cork; Physical vapour deposition machine; Video projectors	-Examination of questions by the EC's Customs Code Committee; -Preparing Explanatory Notes to the Combined Nomenclature; -Preparing classification regulations; -Publishing these texts in the EC's Official Journal; -Generalized use of the Explanatory Notes and HS Classification Opinions; -Generalized use of the EC's BTI Database (over 170,000 BTIs).	Yes as an aid for interpreting the Nomenclature	Yes*

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Hungary	-Yes -Yes -Yes	To specific articles only	See answer to Q6	Decisions always published in the internal journal	Not always	No
India	-Yes -Yes -Yes	Normally to specific article and to same class or kind of articles on case-by-case basis	No report received	Decisions are circulated by way of issuance of Departmental Circulars/instructions	Takes into cognisance only when the same is brought to courts' notice	No
Indonesia	-Yes -Yes -Yes	To specific article to this stage	No	Issuing of Director General Circulars, e.g., Pre-Entry Classification, Dispute Settlement, etc.	Court uses decisions as a reference	No
Ireland	-Yes -Yes -Yes	To identical or similar articles	No experience	All Customs officers are informed of HS EN amendments and Classification Opinions. Binding Tariff Information (BTI) is promoted and use of central expert classification unit is encouraged	Yes	No
Israel	-Yes -Yes -Yes	Only to specific articles which may be produced by different firms and under different names	No	Decisions are translated and sent to regional offices. Incorporating HS commodity data base into national network is also planned	Yes sometimes, but not under legal obligation to do so	No
Japan	-Yes -Yes -Yes	Only to specific article examined	No	EN and Classification Opinions are given administrative status	No answer	No
Korea	-Yes -Yes -Yes	Tries to apply decisions to similar article, but having difficulties with definition of similarity	No	In cases where the HSC classification decisions were reflected in HS Ens or Classification Opinions, they are implemented by public notice	Yes	No

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Lithuania	-Yes -Yes -Yes	To both specific article and to same class or kind of articles. Examples provided	No	Representatives of all regional Customs offices take part in the Commission on Classification of goods if the Customs Department	Not as legally binding elements. Decisions taken into account as additional information	No
Mauritius	-Yes -Yes -Yes	To the same class or kind of articles	No	By Departmental Order and newsletter	Yes, in general	No
Myanmar	-Yes -Yes -Yes	To specific article only	No	Information is disseminated to regional/local offices by means of "office directives" or "circular"	No experience	No
New Zealand	-No -No -Yes*	To similar classes or kinds of articles of goods on case-by-case basis	Not encountered	A centralised classification unit is employed providing binding rulings to clients and is an area of classification expertise for Customs throughout the country. Where new HSC decisions are issued and deemed to be significant to NZ (i.e., are currently traded), consideration is given to specifically publicising the decision	Yes	Yes*
Norway	-Yes -Yes -Yes	Decisions only binding on specific article, although articles of the same class or kind are treated equally	No	So far no measures taken. But preparations are being made to incorporate HSC decisions in the already existing Norwegian database of classification decisions	Not relevant	No
Peru		Apply both to specific and the same class or kind of articles	No	Amendments to the Compendium of Classification Opinions are sent to all regional offices for information and application	Yes in latest cases	Yes*

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Poland	-Yes -Yes -Yes	To the same class or kind of articles. Examples provided	No problems in principle	Regional/local offices are first informed of HSC decisions by the circular letters and then HSC decisions are published by Regulation of Ministry of Finance	Currently yes	No
Romania	-No -Yes -Yes	To specific article only	No	Publication of decisions in the Official Gazette	No	No
Russia	-Yes -Yes -Yes	To both specific article and the same class or kind of articles*	No	The majority of the decisions are implemented through administrative letters and directions, especially in cases when there are problems of classification and disagreements with importers/exporters	Yes as additional information only	No
Rwanda	-Yes -Yes -Yes*	To specific article only	No	-Insertion in national tariff -Publishing in administrative circulars and communicated to all Customs officers	WCO as the only body of arbitration permitted by national legislation	Yes*
Slovak	-Yes -Yes -Yes	To specific articles, but take decisions into account when classifying articles of the same class or kind	No	Regional offices have at their disposal the database of the national pre-entry classification decisions which is regularly updated	No	No
Swaziland	-No -Yes -Yes	Apply to all commodities	No	Practical measures taken are uniform, due to the fact that HSC classification decisions are done by head office only	Yes	Yes*

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Switzerland	-? -? -No	In principle only to specific article or identical or very similar articles	No experience	Decisions are input into the Customs TADOC (Tariff Documentation) database and can be consulted directly by officers from the Customs offices and district directorates. They are also published on the Customs INTERNET site (for Customs users) and on the INTRANET network (for Customs staff).	Yes	No
Tunisia	-Yes -Yes -Yes	Apply to specific article, but also to the same category of articles if no clear solution	No	General distribution to Customs offices and other users	No cases presented	Yes*
United States	-No* -No* -No*	As appropriate based on the circumstances presented.	No information	Central Classification Unit serves to promote the uniform classification of merchandise by all US ports of entry	Yes	Yes*
Zimbabwe	-Yes -Yes -Yes	To specific articles	No problems but application to the same class or kind may create problems	HSC decisions are circulated to all stations as soon as they are received	Yes	Yes*

\* With additional comments

RESPONSES TO THE QUESTIONNAIRE ON NON-APPLICATION  
OF HSC CLASSIFICATION DECISIONS – PART III (QUESTIONS 8 AND 13)

**QUESTION 8**

Australia

The immediate impact is the same, in that the member country concerned is able to classify a particular good in the classification of its choice, irrespective of the decision handed down at the HSC. The act of continual reservation is a de-facto non-application.

Botswana

No difference.

Brazil

The notification of non-application of an HSC decision would be more committing for the Contracting Parties. The administration that enters a reservation with regard to an HSC classification decision just asks for another discussion of the issue and eventually takes some more time for adapting itself to the eventuality that decision comes to be confirmed. That is simply an appeal, an usual recourse against a decision. Things are different in the second case. If an administration, on the basis of a Council Recommendation, declares publicly that it will not apply an HSC classification, that would be a considerable political commitment; certainly the administrations would have to think carefully about the negative aspects of not applying an HSC classification decision, if there is to be a Council Recommendation.

Canada

A reservation is an established and necessary procedure provided for under the HS Convention. This procedure is available to all Contracting Parties and must be in the Convention so as to render its application fair and reasonable. Reservations made on HSC decisions essentially give the reserving Contracting Party another opportunity to have an issue brought to the attention of the HSC.

The non-application of an HSC classification decision is purely a national decision based on national interests. It can be viewed by some Contracting Parties as a form of repudiation of the very spirit of the HS Convention. While there are no formal mechanisms to bind Contracting Parties to HSC decisions, the non-application of an HSC decision undermines the very credibility of the Harmonized System itself. It may also be considered as a form of circumvention of the intent of the HS Convention as outlined in the Preamble of the Harmonized System Convention.

China

Reservation is the right of every Contracting Party and no article requests a Contracting Party to notify the Council if it does not want to apply an HSC decision.

If a recommendation regarding the decision of a particular article is made by the Council, that means it should be abided by every Contracting Party.

#### Côte d'Ivoire

Both are aimed at not applying the classification decisions. However, a reservation implies setting out agreements that challenge the grounds for a classification decision, whereas notification of non-application may simply reflect practical difficulties in implementing the classification.

#### Cyprus

As the reservation is provided in the Convention it is easier to be followed as there is a specific procedure.

#### EC

An immediate consequence of the "reservation" entered in the framework of Article 8 of the HS Convention is that the HSC decision would not be approved by the Council. Consequently, the decision and its legal repercussions are deemed not to exist. The Convention also requires that the questions be submitted to the Committee for re-examination.

Notification by a Contracting Party of its non-application of a firm decision by the HSC does not annul this decision. Under Article 8.2 of the Convention this question is "deemed to be approved by the Council" and has legal effect: for example, publication of an Explanatory Note or a Classification Opinion. This notification can only relate to firm decisions, i.e., those deemed to be approved by the Council. The legal obligation of Article 8.3 of the Convention on a re-examination by the Committee does not exist.

#### Hungary

We do think there is a significant difference between their legal effects.

#### India

Entering a reservation is normally because of technical difference of opinion and differences in interpreting Section or Chapter Notes or tariff headings. Non-application of an HSC decision occurs when an administration decides not to implement such decisions because of certain factors such as revenue loss, appellate orders, court decisions, etc.

#### Indonesia

It is different in terms of legal aspect. Legally entering a reservation is stronger than that of a notification.

#### Ireland

A reservation holds up the decision of the HSC for all and forces further discussion while non-application by a particular administration affects only that administration.

### Israel

Entering a reservation with proper explanations could be a basis for reviewing the classification decision. Entering a reservation should not be interpreted as non-application of the decision.

### Japan

The reservation should only be entered if an HSC decision is considered not to be predicted on the principles of HS classification.

### Korea

Entering a reservation is a procedure through which the dissenting administration is accorded the opportunity of re-deliberation on the issues in dispute regarding classification. Notification of non-application of an HSC classification decision is, in the long-term, intended for the uniform classification by taking stock of implementation situations by the Contracting Parties.

### Lithuania

The notification of an HSC classification decision on the basis of a Council Recommendation would show a position of the HS Contracting Party concerning a particular decision in a more clear way.

### Mauritius

By entering a reservation, an HS Contracting Party may apply an HSC classification at a later stage after reconsideration by the HSC while the notification of non-application means that the Contracting Party is categorically against such decision and will not apply such decision.

### Myanmar

It would be different.

### New Zealand

The two options are not the same. Entering a reservation is an immediate (up-front) statement of objection or non-application of the HSC classification decision whereas notification of non-application would be after the decision was reached and endorsed by the WCO. Furthermore, until such time as CPs are obligated to either apply or notify their position on all HSC classification decisions, it is likely a large number of such decisions will not be "applied" – at least until trade in that product is examined by Customs.



### Norway

Even though a Contracting Party enters a reservation, after re-examination of a case the Contracting Party will usually follow the decision of the majority. A notification of non-application is an expression of a more permanent disagreement. Moreover, an extensive use of "non-application" might reduce the Importance of HSC decisions.

### Peru

All administrations of the Contracting Parties should implement HSC classification decisions, unless they enter a reservation.

### Poland

There should be no differences.

### Romania

Application of HSC decisions is mandatory for administrations of WCO Members, but entering a reservation with regard to an HS classification decision enables an administration to present arguments subsequently in support of its views.

### Russia

If an HSC classification decision will be given binding status that means this decision must be implemented in a binding form by all Contracting Parties to HS Conventions. In the case of entering reservations with regard to HSC classification decisions uniformity in the interpretation and application of the Harmonized System will not be achieved and difference between existing HSC classification decisions and binding HSC classification decisions will be absent.

### Slovak

The difference would be in the status of an HSC classification decision :

- reservation is entered with regard to a decision taken by HSC and not approved by the Council
- notification of non-application of an HSC classification decision is related to the effective HSC decision (approved by the Council).

### Swaziland

Entering a reservation with regard to an HSC decision is better, other than to non-application on the basis of a Council Recommendation.

### Switzerland

When an administration enters a reservation it hopes either to obtain an overturning of the decision in its favour or to gain time to analyse the effects and possibly take the necessary domestic measures to adapt to it. Entering a reservation is a reasoned, transparent legal step in accordance with the provisions of Article 8.2 of the Convention. Entering a reservation in no way prejudices the subsequent implementation of decisions.

Notification of non-application has no basis in the Convention. To some extent it even goes against the inherent logic of the provisions of Article 8 of the Convention regarding approval of HSC decisions. It means an almost irrevocable refusal to implement nationally the appropriate measures to adapt the relevant national regulations or provisions, and for an unspecified period. This declaration casts doubt on the HSC's arbitration role in terms of disputes between Contracting Parties on the interpretation or application of the HS in accordance with Article 10 of the HS Convention. It also undermines the authority of the Council in classification matters. On the plus side, compared to the present situation where cases are not revealed by administrations, it could make the state of application of HSC decisions by the Contracting Parties more transparent. However, the Swiss Administration has some doubts in this respect and would point out that the Council Recommendations are not mandatory and that the objective could only be reached if the Recommendation envisaged were accepted by a large number of Contracting Parties.

### United States

A reservation prevents a decision from going into effect.

### Zimbabwe

Entering reservation is legally binding whereas notification is administrative.

## **QUESTION 13**

### Brazil

We hope the Secretariat will be successful in this task of assuring more general application of the HSC classification decisions. That would be a valuable achievement for the Committee.

### Canada

- Perhaps classification decisions are weakened by calling them Classification Opinions ?
  - Should all HSC classification decisions be published as Classification Opinions ?
  - Would there be any value in using the word "ruling" in the HS Convention ?
  - Very complex issue.
- The issue has potential ramifications on the jurisdiction of national courts, bilateral agreements, and the international trade forum of the World Trade Organization.

- Therefore the issue requires much more study and clarification before any final decisions are made on it.

#### Côte d'Ivoire

The Administration of Côte d'Ivoire invites the Council to issue a general Recommendation concerning the applicability of classification decisions in judicial procedures.

#### EC

It is in the interest of the HSC and the corporate image of the WCO to ensure the uniform application of the HS Convention. This uniform application is also one of the functions legally established by Article 7.1 (c) of the said Convention which specifies that the HSC shall "prepare recommendations to secure uniformity in the interpretation and application of the Harmonized System". It goes without saying that the Committee's decisions, approved by the Council, must be applied by a large number of Contracting Parties. This must be based on transparency enabling administrations, international organizations and economic operators to know the firm decisions of the Committee but also their level of acceptance and application.

#### New Zealand

New Zealand sees merit in all CP's at least "according respect" to HSC classification decisions. To make such decisions binding on all or to require notification of position on each and every HSC decisions may impose a burden in excess of benefit.

#### Peru

A Protocol would be an appropriate instrument to achieve the objective of giving binding status to HSC decisions. With the Protocol, all the decisions taken by Customs and all justice organisms, entities and courts must be in conformity with HSC decisions.

It would be recommended to have the WCO published all the HSC decisions or to summarize annually all the decisions taken until that date, in order to assure that even when you have not received the documents, you will have the updated index of all the HSC decisions.

#### Rwanda

Rwanda would like to receive HSC classification decisions at the same time as the relevant Amending Supplements to the Nomenclature, so as to avoid unproductive arguments that could arise between the Customs and economic operators when those decisions are implemented.

#### Tunisia

- Send all HSC documents to CPs before opening of the session.
- Send all Committee reports in a period allowing administrations not attending the meeting to have time to introduce or reserve so as to avoid non-application of certain decisions.

United States

Uniformity, transparency and consistency in the application and interpretation of the HS should be the objective of all Contracting Parties. The HS Convention contains positive provisions for the application of HSC decisions, reservations and amendment of the Nomenclature. The focus should be on how to make the decision-making process faster and more responsive to administrations and to the trade community.

Zimbabwe

It would be appreciated if WCO would assist on instances that require laboratory analysis as most developing countries do not have the requisite facility.

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