Volume XXIV, Number 3 December 2006

10 Steps to Help You Prepare for the Janaury 1, 2007 Harmonized Tariff System (HTS) Updates

Every five years, the World Customs Organization updates the Harmonized Tariff System (HTS) nomenclature at the international (six-digit subheading) level.

The HTS updates, effective Jan. 1, 2007, are massive. The changes will likely revise your import cost structure and will require significant administrative effort to implement.

If that effort is not timely, it will result in cash flow difficulties and has the potential for increased import cost as well as disruptions to your supply chain.

Accurate HTS code assignment is critical because it determines how a product is taxed when shipped across borders. Manufacturers must start preparing now for these changes because key processes such as product classifications, special trade program qualifications, and certificate of origin solicitations will be affected.

Many importers and exporters manufacture products that are comprised of thousands of parts. Will you be able to handle the significant administrative burden required to reclassify products, update your global classification database, and cope with all of the resulting changes to the various preferential trade programs in which you participate? Don't wait until the last minute. The time to do it is now.

The Risks of Waiting

Large administrative effort: The HTS changes could render your entire database of product classifications obsolete. Many of the individual product classifications will change, and all will need to be reviewed.

Potential for supply chain interruptions: If product classifications are not reviewed prior to import, the analysis will have to be done at time of shipment. The volume of transactions and the need for research on some items will result in shipment delays and thus can impact your supply chain.

Revision to import cost structure: HTS classification is the basis for duty rates. The overall change is meant to be rate neutral, but there will be changes to duty rates for individual items, with a resulting potential impact on the overall duty liability for an individual company. Analysis of the HTS changes and the potential for impact will at least allow time for budgeting, and more importantly, the time for any appropriate revisions to the sourcing strategy. In addition, more than 350 preferential trade programs rely on classification for eligibility determination, and in many cases, require supplier certification. Waiting until the new classification structure is in place to qualify products for preferential treatment will result in deferred duty (cash) benefit and may result in loss of that duty benefit.

The Scope of Changes

• Virtually all sections of the HTS (encompassing 83 of the 97 chapters and 240 headings) will have changes.

• Many of the changes are intended to eliminate confusing language and will result in new subheadings.

• Other subheadings will become more inclusive, thereby removing many product classifications from "basket" provisions.

• Additions, changes, and deletions will also be made to section and chapter notes, resulting in even further product classification changes.

• The national changes could involve either reduction or expansion of statistical breakouts.

• Most preferential trade programs' rules of origin are based on HTS classifications; as such, it is expected that significant changes to these unilateral, bilateral, and multilateral agreements will be necessary.

Impact to the Trade

• Industrial and high-technology products (falling in chapters 84, 85, 87, and 90) will be heavily impacted.

• While the intent is to make changes "substantially rate neutral," it is very possible that duty rates on products may change as they are reclassified under the new numbers.

• There will be a significant administrative burden to reresearch previously classified products to update classification databases applicable to each country and cope with all of the changes to the various preferential trade programs.

• Depending on when the new data is officially available from each country's customs administration, there may be little or no time to properly implement the changes before they become effective.

10 Next Steps for Importers/Exporters

1. Identify your universe of products potentially affected by the changes.

2. Collect national updates as they become available.

3. Monitor all countries' government publications for timing and details of changes.

4. Begin reclassification to the extent possible; this is at least to the six-digit level or greater for countries that have already published additional digits (such as the United States, which has published to the eight-digit level, but not yet to the 10-digit level).

5. Prepare for the solicitation of origin certificates for the various preferential trade programs under the new numbers (taking into account that rules of origin may not be available until after the normal solicitation time next year).

6. Plan contingencies for potential late publication of national HTS and preferential trade program rules of origin, even past the Jan. 1, 2007 effective date.

7. Ensure that adequate staff is available to deal with the workload burden. Consider engaging global trade experts with the systems and knowledge in place to assist with the effort.

8. Communicate with the supply base to make it aware of the issue and request its cooperation in the smooth handling of these adjustments.

9. Coordinate strategy with database administrators to react to possible late changesto ensure timely systems updates.

10. Develop plans with brokers and forwarders to handle problems and avoid border delays.

This article was written by Bernie Hart and was obtained from the May 2006 issue of Managing Imports and Exports..

Pre-shipment Inspections: Exporter Rights and Responsibilities

WHEN IS PRE-SHIPMENT INSPECTION REQUIRED?

Pre-shipment inspections (PSI) are required when mandated by the government of the importing country. Governments assert that pre-shipment inspections ensure that the price charged by the exporter reflects the true value of the goods, prevent substandard goods from entering their country, and mitigate attempts to avoid the payment of customs duties.

The following countries currently require or request pre-shipment inspections:

Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Comoros, Republic of Congo (Brazzaville), Democratic Republic of Congo (Kinshasa), Cote d'Ivoire, Ecuador, Ethiopia, Guinea, India, Indonesia, Iran, Kenya (under review), Kuwait, Liberia, Madagascar, Malawi, Mali, Mauritania, Mexico (see note below), Mozambique, Niger, Senegal, Sierra Leone, Togo, Uzbekistan.

Most countries on the list above request inspections for shipments above a certain value. However, in some instances inspections are necessary for all imported products, regardless of value.

In some cases, a country may require PSIs only for certain types of goods. For example, Kuwait requires PSI for regulated products valued at more than $3,000. Mexico requires a PSI for a variety of goods such as shoes, textiles, steel, and bicycles only if they do not qualify for NAFTA. Shipments to Saudi Arabia and Kuwait must contain a "certificate of conformity" for a small number of products. Though not referred to as a pre-shipment inspection, this certification verifies that the product conforms to the relevant standard by testing and inspecting prior to shipment from the exporting county.

PSI regulations change often, and contracts for pre-shipment inspections are reviewed periodically. Exporters can contact the Commerce Department's Trade Information Center at 1-800-USA-TRAD(E), inspection companies, freight forwarders, or either one of the Oklahoma offices for more information on current regulations.

WHO CONDUCTS THE PRE-SHIPMENT INSPECTION AND WHO PAYS?

Pre-shipment inspections are typically performed by contracted private organizations. In most cases, importers can select from a short list of these organizations when planning inspections. However, sometimes one firm is appointed to carry out inspections for a given country on an exclusive basis. The following is a list of the most widely used private inspection companies:

Bivac/Bureau Veritas, Miami, FL
Tel: (305) 593-7878
http://www.bivac.com

Cotecna, Miami, FL
Tel: (305) 828-8141
http://www.cotecna.com

Intertek, Americas
Tel: (800) 967-5352
http://www.intertek-fts.com

SGS, Miami, FL
Tel: (305) 592-0410
http://www.gts.sgsamericas.com

Inspection costs are generally paid

either by the importer or by the government of the importing country. However, in some cases, the inspection agency may invoice the seller in the event of supplementary inspection visits. The costs associated with presenting the goods for inspection (such as unpacking, handling, testing, sampling, repackaging) are the responsibility of the seller.

WHO IS RESPONSIBLE FOR ARRANGING THE PRE-SHIPMENT INSPECTION AND WHAT IS THE PROCESS?

Although the importer is generally responsible for arranging the pre-shipment inspection, the exporter must make the goods available for inspection in the country of origin. Delays in the process can lead to problems with the shipment and/or increased costs for the exporter. Therefore, it is in the best interest of exporters to work with their freight forwarder to ensure that all information is accurate and is provided to the inspection company immediately after notification of the requested inspection. Requirements for pre-shipment inspections are sometimes spelled out in letters of credit or other documents.

Generally, the inspection company starts the inspection process once it receives a copy of the inspection order from the importing country. An inspection order states the value of goods, the name and address of the importer and the exporter, the country of supply, and the importer's declaration of customs code. The inspection company then contacts the exporter to arrange an inspection site and time.

The steps of the inspection process are usually as follows:

1. The importer opens an import document or license.

2. The importer informs the inspection service in the country of import of a pending shipment, and either pays for the inspection up front or pays a percentage based on the value of the commercial invoice, depending on the terms of the importing country's inspection contract.

3. An inspection order is forwarded to the inspection company office in the country of export.

4. The inspection company contacts the exporter to arrange date, time, and location for inspection. It also requests all required shipping documents and price information (invoices). The exporter must provide these documents in a timely manner to avoid demurrage or other penalties.

5. The inspection is performed.

6. If no discrepancies are noted during the inspection, and once all final documents are received from the importer and exporter, a "Clean Report of Findings" is issued confirming the shipment's value, customs classification, and clearance. The final documents required for issuance of the "Clean Report of Findings" vary by contract but most often include a final invoice and bill of lading or airway bill.

7. The goods are shipped to the importing country.

8. The importer uses the inspection report to get the imported goods released from customs. If goods reach the border of the importing country without inspection, they usually have to be re-exported to a nearby country for inspection prior to re-entry or are subject to heavy penalties.

WHAT SHOULD I DO IF A PROBLEM OR DISAGREEMENT ARISES WITH THE PRE-SHIPMENT INSPECTION?

If a disagreement arises on the findings of the pre-shipment inspection, a resolution to the discrepancy should be negotiated with the inspection company. However, if exporting to a World Trade Organization (WTO) member country, the WTO Agreement on Pre-shipment Inspection spells out the responsibilities of the exporter and the inspection company. The Agreement requires the inspection company to appoint an appeals official and

2007 Governor's Award for Excellence in Exporting

The Governor's Award for Excellence in Exporting recognizes one or more Oklahoma firms for successful and noteworthy efforts to increase export sales. Increasing exports means more jobs and enhanced economic development for Oklahoma.

If you would like to nominate your company or another company for the 2007 Governor's Award for Excellence in Exporting, call either 405/608-5302 or 800/TRY-OKLA, extension 223, or e-mail ashley.wilson@mail.doc.gov for an application. The application must be completed and returned by March 9, 2007.

Recent Winners of the Governor's Award for Excellence in Exporting

2006	IronWolf	Noble
2005	Advance Food Company	Enid
	C. H. Guernsey & Company	Oklahoma City
2004	SCIFIT Systems, Inc.	Tulsa
2003	The Charles Machine Works, Inc.	Perry
2002	T. D. Williamson, Inc.	Tulsa
2001	Texoma Peanut Company	Madill
2000	Stillwater Designs	Stillwater
1999	Midwestern Manufacturing Company, Inc.	Tulsa
1998	George E. Failing Company (GEFCO)	Enid
1997	Doug Carson & Associates (DCA), Inc.	Cushing
1996	Lowrance Electronics, Inc.	Tulsa
1995	Continental/SiLite International	Oklahoma City
1994	BSW International	Tulsa
1993	SSI Custom Data Cards	Edmond
1992	Unarco Commercial Products	Oklahoma City

comply with the Agreement guidelines when carrying out their pre-shipment inspection services for signatory countries.

Detailed information on the Agreement is available online http://www.export.gov/tcc or by contacting the Office of Multilateral Affairs within the Department of Commerce at Tel: (202) 482-0603.

ARE THERE ADDITIONAL CERTIFICATION INSPECTIONS THAT DEAL WITH AGRICULTURAl AND FOOD PRODUCTS?

Several agencies within the U.S. Department of Agriculture provide inspection services when certificates are required to clear agricultural and food products through overseas customs. Sanitary and phytosanitary certificates, which are normally issued to protect U.S. consumers can also be used for international trade purposes.

The Federal Grain Inspection Service (FGIS) conducts inspections of grains, pulses, oilseeds, and processed and graded commodities. Export weighing and quality inspection at the time of shipment is mandatory for bulk or bagged grains and oilseeds under the U.S. Grain Standards Act. Per NAFTA, non-waterborne shipments bound for Canada and Mexico are exempt from mandatory inspection.

FGIS is required by law to perform these inspections (for a fee), and they provide the only "official" grain quality and quantity inspections in the United States. However, some contracts may specify that a particular private firm must perform an inspection, as well. For more information about grain inspection, please visit www.gipsa.usda.gov.

The Animal and Plant Health Inspection Service (APHIS) assists exporters in meeting the plant quarantine import requirements of foreign countries. They conduct inspections to certify that certain products, such as fruits, vegetables, plants, seeds, grains, and grain products are free from quarantine pests and meet the phytosanitary regulations of the importing country.

Additional certifications may be required in some cases. For further information see the "Ask the TIC" articles on export procedures and requirements at http://www.export/gov or contact either one of our offices.

U.S.-Australia Free Trade Agreement: How U.S. Companies Benefit

After the U.S. Senate and House of Representatives approved the U.S.-Australia Free Trade Agreement (FTA), President Bush signed implementing legislation on August 3, 2004. Both houses of the Australian Parliament approved implementing legislation on August 13, 2004. The Agreement entered into force on January 1, 2005.

On the day the FTA entered into effect, tariffs that averaged 4.3 percent were eliminated on more than 99 percent of the tariff lines for U.S. manufactured goods exports to Australia. Exports of these goods account for 93 percent of total U.S. goods sales in Australia's market, and reducing tariffs created new export opportunities for America's manufacturers. With virtually all U.S. manufactured exports becoming duty-free immediately, the National Association of Manufacturers (NAM) estimated that the manufacturing sector could sell $2 billion more per year to Australia and that U.S. national income could grow by nearly that much..

This is the most significant immediate reduction of industrial tariffs ever achieved in a U.S. FTA and it has provided immediate benefits for America's manufacturing workers and companies. Beyond this, the FTA affords substantial benefits in a broad range of other sectors as well. Markets for services such as life insurance and express delivery are open; intellectual property is better protected; American investments are facilitated through predictable access and a stable business environment. For the first time in many sectors, American firms are allowed to compete for Australia's government purchases on a nondiscriminatory basis. All U.S. farm exports - nearly $700 million last year - are duty-free to Australia, benefiting many sectors such as processed foods, fruits and vegetables, corn, and soybeans. The FTA has also made advances in e-commerce and pharmaceutical market access.

In order to take advantage of the benefits for U.S. goods under this Agreement, exporters will need to understand how to determine that their goods are "originating," that is, how they qualify for preferential duty treatment under the U.S.-Australia FTA Rules of Origin.

The concept of "originating" goods can be a complicated one. The details are in the text of the U.S.-Australia FTA. Details regarding how Australia determines whether goods are originating can be found at the Australia Customs Service website, www.customs.gov.au.

The Department of Commerce's Market Access and Compliance offices are monitoring this Agreement to ensure that Australia fully complies with its trade obligations. If you encounter problems under the U.S.-Australia FTA, please visit the Trade Compliance Center website at http://tcc.export.gov/Report_a_Barrier/index.asp or contact either one of our offices.

Q. How does the agreement benefit U. S. exporters?

A. Among other benefits from the elimination of non-tariff barriers, the FTA allows the U. S. supplier to be more price-competitive in the Australian market simply due to duty reduction. A U. S. exporter that is able to prove that its goods qualify under the Agreement may afford its buyer considerable savings. U. S. exporters will also be more competitive in Australia against competing third country products that do not have the duty benefits.

Q. How can my product qualify to take advantage of the U. S. - Australia Free Trade Agreement?

A. The product must qualify as an "originating" good under the terms of the Agreement. This means that the product must have sufficient U. S. or Australian content or processing to meet the criteria of the agreement. If goods contain only U. S. or Australian inputs, they qualify. If they contain some inputs from other countries, they still might qualify if they

meet specific criteria set out in the Rules of Origin of the agreement. Each product has a unique rule. Most of the rules require either that the non-U. S./Australian inputs undergo a substantial transformation through processing in the United States or Australia (tariff shift method) or that they have a sufficient level of content as determined by a formula (regional value content method).

Q. Will this require additional documentation for all of my shipments to Australia?

A. First, you do not need to provide any additional information if you are not claiming the duty benefits under the agreement. U. S. goods can still enter Australia without FTA benefits. If your goods qualify, however, your importer will want to claim FTA duty benefits. The importer will need to be able to supply a statement of why the goods qualify. So your importer may ask you for proof of qualification, such as a Certificate of Origin or another statement.

Q. In order to be eligible for preferential duty rates is it necessary to fill out a Certificate of Origin?

A. The U. S.-Australia FTA calls for a claim of preference from the importer. This Agreement does not require that the importer provide a certificate of origin in support of the claim of preference. However, importers claiming a preference for a good must be prepared to submit, upon request by Customs authorities, a statement setting out the reasons that the good qualifies, including pertinent cost and manufacturing information. No particular format for such a statement is specified in the Agreement.

The importer may therefore ask the exporter for this information. The exporter (seller) may give confirmation, in an unprescribed format, of why the goods qualify as "originating," which the importer may use to validate its claim. It is advisable to work with your importer and provide your importer with a written statement of origin.

Customs officials can require importers to maintain documents relating to purchases and costs for up to five years after importation, should investigation and verification of claims be required. Customs officials can also seek information from exporters in verifying claims.

Q. Can I use a North American Free Trade Agreement (NAFTA) Certificate of Origin to declare that my products qualify for preferential duty treatment under the U. S.-Australia FTA?

A. No. The U. S.-Australia FTA differs from NAFTA. Under the U. S.-Australia FTA, there is no standard Certificate of Origin document for the exporter to complete.

Q. Why do I need to go through the process of qualifying my good if I don't even need a Certificate of Origin?

A. Regardless of what form - written or oral - the statement of eligibility for preferential duty rates takes, it remains a declaration whose truthfulness may be verified or audited by Australian customs. If the goods are found not to qualify, the duty benefit will be lost at best. Declarations that are found after the fact to deliberately make false statements may result in significant penalties.

Q. I have heard that packaging materials and containers are not taken into consideration when qualifying a good under the U. S. - Australia FTA. Is this true?

A. When the packing materials and containers are being used for shipping purposes, the materials and containers are disregarded in determining the origin of the good being shipped.

In cases where the packaging material or container is for retail sale, it will be disregarded in qualifying the good only if it is classified with the good and the good qualifies using the tariff shift method. If the container is not such that its classification is contained within the classification of the good, or the regional value content method is used, the material or container will need to be considered in determining whether the good qualifies as originating.

Q. I often send accessories for my product separately from the product. Will these qualify automatically if the main product qualifies?

A. No. When accessories, spare parts, or tools are delivered with a good, they are regarded as a material used in the production of the good as long as 1) they are classified with and not invoiced separately from the good and 2) the quantities are not considered to be unusual. However, when these ancillary items are sent separately from the original good, they are treated as a separate export and must qualify as such.

Q. What if my good is produced in the United States, but is transshipped through a third country on its way to Australia? Can it still qualify for preferential treatment?

A. It can. According to the U. S.-Australia FTA, a good that undergoes "subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of a Party" can no longer qualify for preferential treatment.

Q. Will the Agreement create new opportunities in electronic commerce?

A. The Agreement ensures that digital products, including software, music, video, and text, will receive non-discriminatory treatment and makes permanent the current practice of not subjecting such transmissions to customs duties. This is the first Agreement to include provisions on facilitating authentication of electronic signatures, encouraging paperless trade and establishing a program for cooperation on other e-commerce issues.

Q. What will be different about investing in Australia?

A. All U. S. investment in new businesses is exempted from screening under Australia's Foreign Investment Review Board. Thresholds for acquisitions by U. S. investors in nearly all sectors are raised significantly, from A$50 million to A$800 million, exempting the vast majority of transactions from screening.

Q. Will there be new arbitration procedures for investment disputes?

A. In recognition of the unique circumstances of this Agreement - including, for example, the longstanding economic ties between the United States and Australia, their shared legal traditions, and the confidence of their investors in operating in each others' markets - the two countries agreed not to adopt procedures in the Agreement that would allow investors to arbitrate disputes with governments.

Q. Will U. S. companies be able to sell to the Australian government?

A. Under the Agreement, U. S. suppliers are granted non-discriminatory rights to bid on contracts to supply Australian Government entities, including all major procuring entities and administrative and public bodies. Commonwealth (federal), state and territory government agencies are included. The Australian Government will eliminate its industry

development programs, under which suppliers have had to meet various types of local content or local manufacturing requirements as conditions of their contracts. The Australian Government also will restrict its use of selective tendering, which will ensure that U. S. suppliers have a fair opportunity to compete for government contracts.

Q. If I believe after thoroughly reviewing my product, its inputs, and the applicable Rule of Origin, that there remains ambiguity as to the "originating" status of the product under the U. S.-Australia FTA, is there a way that I can find out the position of Australian customs prior to the arrival of my goods in Australia?

A. The Customs authority of Australia will issue "advance rulings" at the written request of the importer, exporter, or producer on questions of tariff classification, customs valuation questions, duty drawback, origin, and treatment of goods entering temporarily for repair or alteration. Extensive information regarding the facts and circumstances of the inquiry will be required by the Customs authority prior to issuing such a ruling.

For more information, please visit http://www.ita.doc.gov/td/tic/fta/australia/or call either of the Oklahoma offices.

February 2007 Calendar of Events

Date	*Event*	*Contact*
February 6, 2007	Minority and Women's Breakfast Metro Tech Conference and Banquet Center, Oklahoma City	Aquilla Pugh 405/427-4444
February 14, 2007	Exporting 101 - Basics of Exporting Workshop OSU-Tulsa, Tulsa	918/581-7650 or 405/608-5302

U. S. Department of Commerce
International Trade Administration
District Office
301 N. W. 63rd Street, Suite 330
Oklahoma City, Oklahoma 73116

OFFICIAL BUSINESS

Penalty for Private Use, $300

FIRST-CLASS MAIL
POSTAGE & FEES PAID
ITA/DOC
PERMIT No. G54