



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

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HARMONIZED SYSTEM
COMMITTEE
-
23rd Session
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NC0076E1

O. Eng.

Brussels, 26 April 1999.

POLICY ISSUES RELATING TO THE HARMONIZED SYSTEM

(c) Improvement of dispute settlement procedures

(Item III.4 (c) on the Agenda)

Reference documents :

40.200 (HSC/17)	42.550 (PC/39 – Report)
40.260, Annex C/11 (HSC/17 – Report)	42.402 (HSC/22)
40.411 (HSC/18)	42.750, Annex C/4 (HSC/22 – Report)
40.692 (HSC/18)	42.720 (PC/40)
40.600, Annex C/8 (HSC/18 – Report)	42.832 (PC/40 – Report)
42.377 (PC/39)	NC0004E1 (HSC/23)

I. BACKGROUND

1. The HS Committee, at its 22nd Session in November 1998, examined the question of establishing a Dispute Settlement Panel for speedy resolution of HS classification disputes, on the basis of a suggestion made in the Policy Commission (39th Session).
2. At the 22nd Session, in connection with the Secretariat's proposals to hold HSC meetings more frequently and to establish a dispute settlement panel as an ad-hoc Working Group, a question was raised as to the relationship between the proposed Working Group and the HSC and the legal basis for the proposal. The Secretariat explained that to settle a dispute, Article 10 of the HS Convention required (i) the Contracting Parties in dispute to try to settle it by negotiation, (ii) if not so settled, the Parties are to refer it to the HSC for its recommendation and (iii) if not so settled, the HSC is to refer it to the Council for its recommendation. Since the Council is a large forum consisting of DGs of all WCO Members, it would have to be assisted by a group of neutral experts in the area of the HS who would do preparatory work for the Council's recommendation. Therefore, there was no question of conflict between the Working Group and the HSC. Article 10.3 of the Convention was the legal basis for the idea. After discussion, the Committee agreed to continue to study this subject at its next session.

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3. The Policy Commission (40th Session in December 1998) took note of these developments and agreed that the HS Committee should examine this complex matter in more detail with particular reference to the justification for establishing such a body as well as its operating procedures. The HS Committee might also draw on the experience of the WTO and other bodies which were already managing dispute settlement procedures.
4. The Secretariat requested, by letter of 28 January 1999, administrations to submit their comments and suggestions for carrying out a study of this question, in particular, with respect to establishing a Dispute Settlement Panel, the nature of disputes it should be asked to handle, the procedure for settlement of disputes and the legal provisions of the HS Convention which would support such a procedure.

II. SECRETARIAT COMMENTS

5. While the Secretariat has received responses to its survey from a number of administrations, many administrations have not responded and many responses were received only recently. For that reason, the Secretariat would propose postponement of the discussion of this question until the 24th Session of the Committee.
6. In the Secretariat's view, this is an important issue which requires due consideration. To date, the discussion has been quite unfocused. No one has clearly defined the concept of setting up a dispute settlement panel in the context of the Harmonized System.
7. Furthermore, the Secretariat has not had sufficient time to study the experiences of the WTO and other organizations which are already managing dispute settlement procedures. Nor has the Secretariat had sufficient time to consider the legal implications with regard to the Harmonized System Convention of the different dispute settlement options.
8. The Secretariat takes the view that the mandate from the Policy Commission is not merely to study the possible establishment of a WTO type of dispute settlement mechanism nor a Working Group under Article 10.3 of the HS Convention, but that the Committee should examine all options for improving and speeding up HS classification dispute resolution.
9. The Secretariat would therefore propose to study the broader question of improving HS dispute settlement procedures during the intersession with a view to bringing different options to the Committee at its 24th Session, including complete information on the results of its survey of member administrations, the WTO procedures and the legal implications of the different options. Further administration comments and proposals would, of course, be welcome.

III. CONCLUSION

10. The Committee is invited to exchange views on this matter, taking into account the Secretariat's comments above, and in particular to indicate whether it could agree with the Secretariat's proposal in paragraph 9 above as a way to proceed with this question.
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