



HARMONIZED SYSTEM
COMMITTEE

-
27th Session
-

NC0357E1

O. Eng.

Brussels, 23 March 2001.

SPEEDING UP THE HS REVIEW PROCESS

(Item III.2 on Agenda)

Reference documents :

NR0069E1 (RSC/20)
NR0072E2 (RSC/20 – Report)
NC0104E1 (HSC/24)
NC0160E2 (Annex E/2 - HSC/24 – Report)
SC0015E1 (SC/95/96 – Report)
SP0060E1 (PC/44)

I. BACKGROUND

1. During the last WCO Open Days for the trade community in November 2000, there was strong sentiment on the part of the trade that the HS review process needed to be expedited. The view was expressed that, in an age when product cycles are counted in months and no longer in years, it was unacceptable for the revision of the Harmonized System to take a minimum of five years.
2. This sentiment was also shared at the last meeting of the Policy Commission in December 2000, when the Secretariat was asked to make recommendations to the Policy Commission and the Council in June 2001 for a shorter review cycle. This document represents the Secretariat's first step towards responding to that request.
3. The question of the length of the HS review cycles has, of course, been discussed in detail on various occasions in the past. The length of the first review cycle was set at four years. The length of the second was extended to six years with a view to possibly (and it turned out optimistically) incorporating the results of the Origin Harmonization Work Programme in that review cycle. The most recent of the discussions on the length of the HS review cycle took place during the 20th Session of the Review Sub-Committee and the 24th Session of the HS Committee. At that time it was agreed that a five-year cycle would be the most appropriate period, taking into account the interests of the various users of the HS, in particular the United Nations. That time frame was also endorsed by the Council at its 95th/96th Sessions in July 2000.

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II. SECRETARIAT COMMENTS

4. Determining the length of the HS review cycle is, of course, a matter of balancing a number of conflicting interests. On the one hand there is the very important interest of keeping the Harmonized System (and the national tariffs and statistical systems that are based thereon) up to date in terms of changes in technology or patterns of international trade. This interest was clearly recognised by the “fathers of the Harmonized System” in the establishment of the HS Review Sub-Committee. This interest is strongly represented by the private sector.
5. On the other hand, because the Harmonized System provides the almost universal basis for Customs tariffs and import and export trade statistical systems there is a need for a degree of long term stability in the System. This interest is largely represented by governments and international organisations, in particular the international statistical community.
6. Beyond these conflicting interests, there are certain very practical considerations that need to be taken into account in determining the length of the HS review cycle.

Implementation period

7. Article 16 of the HS Convention provides for what is, in effect, a two and one-half year implementation period for amendments to the Harmonized System. On its face that appears to be an extraordinarily long period of time. However, upon closer consideration one-half year is allotted for the entry of reservations by Contracting Parties to the amending recommendation; the remaining two years are set aside for :
 - Development of requisite correlation tables between the old and the new versions of the HS
 - Drafting of amendments to the Explanatory Notes
 - Updating and republication of all HS publications (Nomenclature, Explanatory Notes, Classification Opinions, Alphabetical Index, Commodity Database, Harmonizer, etc.)
 - Updating of the WCO Web site
 - Translation of the texts concerned into third languages
 - Legislative process in Member administrations
 - Updating of affected computer databases in Member administrations
 - Training of Customs, other affected government agencies and the trade in Member administrations
 - WTO negotiations re possible impairment of tariff concessions
 - Revision of the trade statistical systems of the United Nations (e.g., SITC, CPC).
8. As can be seen from the above list, a major amendment to the HS engenders a lot of work for the WCO, other international organisations, Member administrations and the international trade community as a whole.
9. In this connection, it should be noted that based on the experience we have had with the first and second set of amendments to the Harmonized System, only 45% and 58%, respectively, of Contracting Parties were able to implement the amending recommendations on time. In addition, our current experience in implementing the latest set of amendments

indicates that we will need the full two and one-half period and we will again have a number of Contracting Parties that will not have been able to live up to their obligations.

10. Finally, the two and one-half year implementation period can, of course, only be shortened if we amend the HS Convention. In that connection it should be recalled that during the drafting of this part of the Convention one-half year was added to the period to meet the specific domestic legislative needs of one of the major Contracting Parties.

Drafting period

11. A more likely area of time savings is the drafting period – that is the period taken up by the Review Sub-Committee and Harmonized System Committee to consider and finalise proposals to amend the Harmonized System. For the current review cycle four years, covering eight RSC meetings and eight HSC meetings, have been dedicated to this work.
12. There is certainly a degree of flexibility as to how much time to spend on each review cycle. Clearly the total time period could be shortened and/or the number of meetings of the RSC and HSC could be increased to meet the need. Let's look at these two options.
13. As concerns the amount of time needed for the drafting period, the Secretariat would note that the process is not a simple one. The process normally starts with contact between the international trade community and the government agencies charged with determining trade policy in Member administrations. In other words, the private sector often makes requests to Customs or the Trade Ministry for amendments to the Harmonized System. In some countries those requests are published for public comment. The requests are then considered by all of the agencies that may have an interest in the matter, e.g., Customs, Finance, Commerce, Trade, Agriculture, Environment, Health, Defence, etc.
14. Once a national government position is agreed upon, the proposal is dispatched to the WCO where it is turned into a working document (including analysis) by the Secretariat and published for the consideration of the Review Sub-Committee. If the proposal is a simple one the Sub-Committee may accept it upon its first review. More commonly, however, proposals are subjected to an initial review by the Sub-Committee and held over for further consideration at a subsequent meeting to resolve questions that may have arisen during the first review or just to give administrations time to take the proposal home for a detailed review by their industry and interested government agencies.
15. If the proposal is relatively straightforward and non-controversial the proposal may be approved by the RSC at its second review. If questions remain or the proposal is controversial additional consultations and lobbying may be necessary, including industry to industry consultations. Questions of a chemical nature are normally referred to the Scientific Sub-Committee for its advice. The SSC only meets once a year.
16. Once proposals for amendments are approved in principle additional committee time is needed to resolve drafting issues. It must be remembered that these amendments affect legal text that provides the basis for Customs tariffs in over 170 countries of the world.
17. After having been considered by the Review Sub-Committee the texts are sent to the Harmonized System Committee for final approval. While the Review Sub-Committee operates by consensus, the final decision in the HSC is based on a two-thirds majority vote.

18. The Harmonized System Committee aggregates all of the proposed amendments during a review cycle and ensures that all conforming changes necessitated by the amendments are made. At the end of the review period the aggregated amendments are presented to the Council for approval in the form of an Article 16 Recommendation. After approval by the Council any HS Contracting Party has six months to enter a reservation with regard to any or all of the recommended amendments.
19. As can be seen from the description of the above process, time is needed for the HS review. The amount of time, of course, is directly related to the depth of the review. Much of that time is taken up by industry and domestic consultations. The Secretariat would note that during the current review cycle two sessions of the RSC (25% of the allotted sessions) have passed with almost no proposals from administrations because of the time needed for consultations and the preparation of proposals prior to their submission.
20. Another possibility for speeding up the HS review, of course, is to hold more or longer meetings of the Review Sub-Committee. The Secretariat would point out in this connection that the HS Committee has already agreed to ask for two-week meetings of the Sub-Committee beginning with its Fall 2001 Session and has also agreed to add a Working Group to examine the need to revise the ADP provisions of the HS.
21. Additional meetings beyond what is already envisioned would be difficult in view of the time needed for industry and government consultations during the intersessions.

Options for speeding up the HS review process

22. The options for speeding up the HS review process are, frankly, limited. The speed of the review depends largely on the scope of the review and the extent to which international consensus exists on the proposed amendments. The problem is that the scope of the present review cycle is extensive including, in particular, a review of the high technology provisions of the HS. In addition, it is exactly those provisions that have been the subject of most dispute in the HS Committee. In this connection, it is interesting to note that even when there is world wide industry consensus there may still be reasons why governments do not agree on certain amendments to the HS.
23. That having been said, the Secretariat is quite sympathetic to the idea of accelerating the HS review and has done everything it could to jump start the 3rd HS Review Cycle.
24. One option for future review cycles is, of course, to amend Article 16 of the HS Convention to shorten the implementation period from two and one-half years to two years or even one and one-half years. However, as we have indicated above since implementation for most countries involves the legislative process such a reduction in time may not be realistic.
25. We should remember that one of the major objectives of the Harmonized System, as its name implies, is international harmonization of Customs tariffs. It would be completely counterproductive if we were to speed up the implementation period only to find different version of the HS in use internationally for long periods of time. We have already mentioned that, even given two and one-half years, a substantial percentage of administrations have not been able to implement revised versions of the HS by the required date.

26. The most promising option for shortening the review process is to shorten the drafting period and consideration could be given to shortening the time from four to three years and thereby shortening the overall cycle from five to four years. However the Secretariat would again emphasise the ambitious nature of the present review and the fact that we have already lost almost one year of the allotted four.
27. One last option is one that we are examining under another Agenda item (III.3) – the use of information technology to speed up the way we do our business. That option may offer hope for the future, but would appear to have marginal benefits during the present cycle.

III. CONCLUSION

28. As indicated above, the Secretariat is sympathetic to the need to accelerate the HS review process. At the same time the Secretariat understands the reasons why the process is a lengthy one. It must be remembered that the Harmonized System is the legal instrument that is the universal basis for Customs tariffs and the international trade statistical system. For that reason changes must be well thought out, designed for the future, well prepared and effectively implemented. It also means that there is an interest in a certain degree of stability in the System, particularly by our member governments and fellow international organisations. It is a difficult balance to strike.
29. The Secretariat also appreciates that the decision is not only, or perhaps not even primarily, a Customs decision. Tariff policy in many administrations falls into the portfolio of the Trade Ministry or the Commerce Ministry and is certainly a great concern of the private sector.
30. That having been said, the Harmonized System Committee is asked once again to give its views as to ways and means to speed up the HS review process. In particular we would ask the Committee to :
- express its views on the Secretariat's comments above,
 - indicate whether it believes the present review cycle could be shortened and, if so, how and to what extent, and
 - state whether Article 16 of the HS Convention should be amended in the future to shorten the implementation period.
