



Brussels, 31 January 2019

CUSTOMS LABORATORIES AND STRATEGIC REVIEW OF THE HS

(Item XX. on the Agenda)

Introduction

1. After a long period of relative stability in the global trade, we are now in a period of considerable uncertainty. In the face of rising economic nationalism, increased questioning of global trade rules, practices and institutions, and greater volatility in trade measures, many of us are uncertain what will be demanded of Customs administrations in relation to trade and trade revenues in the short to medium term.
2. In addition, rising global threats, such as climate change, terrorism and global food insecurity, increase the need to have a strong and globally co-ordinated response on the movement of goods across borders.
3. One very practical measure in this climate is to strengthen the tools we have. This increases our ability to respond to changing demands. Two of the most important tools in this regard are the Harmonized System (HS), the bedrock of tariffs, and the customs laboratories, one of the most definitive tools in determining compliance.

Customs laboratories

4. We will begin with laboratories as these are one of customs' most versatile tools.
5. The role of Customs has evolved over many decades from its traditional role of revenue collection and protection of domestic industry, towards the protection of society. Responses to very diverse threats, such as drug trafficking, environmental dangers, mineral resources theft and terrorism, are commonly expected from our Members. At the same time, there is also the expectation that Customs will simultaneously facilitate trade and collect all due revenues.
6. It is not surprising in the face of all these demands that the role of the Customs Laboratories has also evolved. Its traditional role to determine tariff classification, and ultimately the corresponding customs duties, is still important. But to this we now add increasing demands in relation to detecting or confirming violations of prohibitions and restrictions: sometimes directly and other times through determining classification.

7. Part of this increased demand on laboratories is the enlarging scope of the HS. In each review cycle the WCO receives requests to open subheadings for substances or products of concern. The types of requests are highly varied, but some of the more common requests include new classifications for:
 - dual-use substances that can be used in industry or incorrectly used for the production of explosives or weapons of mass destruction;
 - chemicals that deplete the ozone layer or warm the atmosphere;
 - substances that could be dangerous to health or that are necessary to improve it, such as products to fight malaria; or
 - new illicit drugs.
8. Looking at the above examples, the issues giving rise to these types of requests are global concerns. Terrorism, trade in dangerous substances (such as persistent pollutants, hazardous wastes and other environmentally damaging chemicals), movement of goods commonly subjected to restrictions or prohibitions (such as drugs of addiction) and other global threats require a global response, whether this is the collection of trade statistics, both globally and nationally, or global agreements on control.
9. However, while we can add classifications to the HS, there is still the problem that many of these goods are difficult to identify without testing. While laboratory facilities and staff are a relatively substantial investment, the increase in the complexity of the products and the difficulty of identifying substances of concern justifies the decision of having a well-equipped laboratory and facilities adapted to the expected role of a modern Customs.
10. Without a good laboratory, how do you respond to government demands to variously prohibit, restrict or facilitate different gasses? Can you ensure that the chemical coming in at a free rate of duty is actually the chemical entitled to that rate? How do you know that supposedly low value ore does not contain rare metals? Is this suspicious substance a new precursor for which you don't have field tests? Without the facilities and know-how to test, customs officers are working blind in many areas.
11. The WCO has followed the evolution of the role of the customs laboratories and is pleased to offer assistance and capacity building opportunities to countries that have decided to start or upgrade a laboratory to meet the challenges ahead. The WCO regularly conducts capacity building activities and training for customs chemists and laboratories. This is usually conducted with the technical and financial help of countries that lead the world in customs laboratory facilities.
12. In addition, the WCO has developed a Regional Customs Laboratories program which recognises top customs laboratories that have a commitment to building support networks for customs laboratories regionally and globally. When tackling global problems, the ability for customs chemists to network and learn of new trends, exchange ideas and experiences and share capabilities is crucial.
13. Recognising the increasing sophistication of much illegal activity in this area, the WCO is also looking at taking up a new challenge. While many courts in many countries routinely accept customs laboratory findings, it has been reported that the authority of non-accredited laboratories is being questioned by defendants in a range of countries. In order to guarantee court acceptance of analytical results, the WCO is investigating avenues to assist customs laboratories to acquire accreditation under ISO 17025 or the appropriate equivalent in their country.

14. In order to better understand emerging needs of laboratories and problems faced by administrations in establishing and maintaining laboratories, the WCO is taking the opportunity of the survey required to update the Customs Laboratory Guide to gain a better insight in the situation of customs laboratories. During the presentation of this item, we will present the preliminary findings.

The strategic review of the Harmonized System

15. The Harmonized Commodity Description and Coding System, or the HS, is the trade nomenclature for Customs use. With 157 Contracting Parties and 211 economies applying the HS, it is one of the most successful and unifying instruments of the WCO and a major factor in global trade.
16. The HS:
- Classifies all goods, known or unknown;
 - Uses a set of rules for classification that is identical around the world;
 - Is relatively stable over time, so provides a relatively consistent base for policy, planning, procedures and controls, as well as time series data sets over decades for many goods; and
 - Is integrated into many trade systems, software and practices.
17. Despite its many strengths, the HS also has significant problems. Some are integral to the system itself while others have arisen as the world and trade have changed.
18. The HS:
- Is not usually simple and for many users and goods classification is very difficult;
 - Has a significant degree of subjectivity and ambiguity built into the rules, structure and language which reduces uniformity and increases disputes;
 - Adapts slowly to new goods, forcing important new products and industries to invisibility in residual or inappropriate classifications; and
 - Is very difficult to adapt for many of the new policy needs and current trade practices.
19. The HS is a living document and was never intended to be a static, historical document. We have seen seven versions implemented and the Harmonized System Committee (HSC) and Review Sub-Committee (RSC) are finalising five years of work to present the eighth edition to the WCO Council in June 2019 for acceptance.
20. Despite all this work, there are still concerns about the difficulties of classification in the HS Nomenclature and about its ability to keep pace with changing times. The need for amendments has continued to rise – taking the May 2008 and June 2018 RSCs as comparison points (same stage in their respective review cycles), change proposals rose 244 % and showed a substantial increase in their complexity. The figures also showed increases in the volume and complexity of classification disagreements. At the March 2008 HSC, only 7 votes were required on classification issues (those not resolved by consensus). By the March 2018 HSC, 26 votes were cast on classification. In addition, 12 of these had a third or more of the HSC members dissenting. This is indicative of the lack of clarity of either the provisions or how the General Rules apply. Furthermore, adverse feedback on compliance issues, the low

availability of technical expertise and the cost of developing such expertise, and the lack of sufficient granularity or clarity in provisions has also been heard.

21. Despite the problems, the HS is truly invaluable. The loss of the HS would be devastating to both Customs and trade.
22. Such a loss would mean a return to a world where trade was hampered by different classifications and classification rules in different countries, where there was no platform for a co-ordinated response to goods that posed a global threat, and where a global picture of trade was practically impossible due to different systems of classification.
23. It is this importance of the HS that has led to the decision to seek a strategic review to ensure that it remains strong and fulfils the needs it is intended to meet.
24. As a multi-user and multi-functional nomenclature for tariffs and statistics, there are a great many sectors that have a deep interest in and need for the HS. In addition, to fully understand if the HS is truly reflecting trade, then talking to those who produce and trade goods is vital. For this reason, we believe that the consultation needs to be wide.
25. We are holding an open conference “Revitalizing the Harmonized System” on 2 – 3 May at the WCO. The conference is subtitled “*What is needed for a 21st Century Harmonized System?*”. It asks:
 - What an ideal customs nomenclature would look like;
 - How the HS is performing;
 - What is the size of the gaps between what we want, what we need and what we have; and
 - Where to from here?
26. At the presentation of this item, further information will be given on the Conference and how to be part of creating the HS's future.

Action required from the PTC

27. The PTC is invited to:
 - take note of the latest developments and challenges in the area of Customs laboratories;
 - discuss the role of Customs laboratories; and
 - provide a feedback and guidance on future actions to enhance the utilization of laboratories in the modern Customs environment;
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