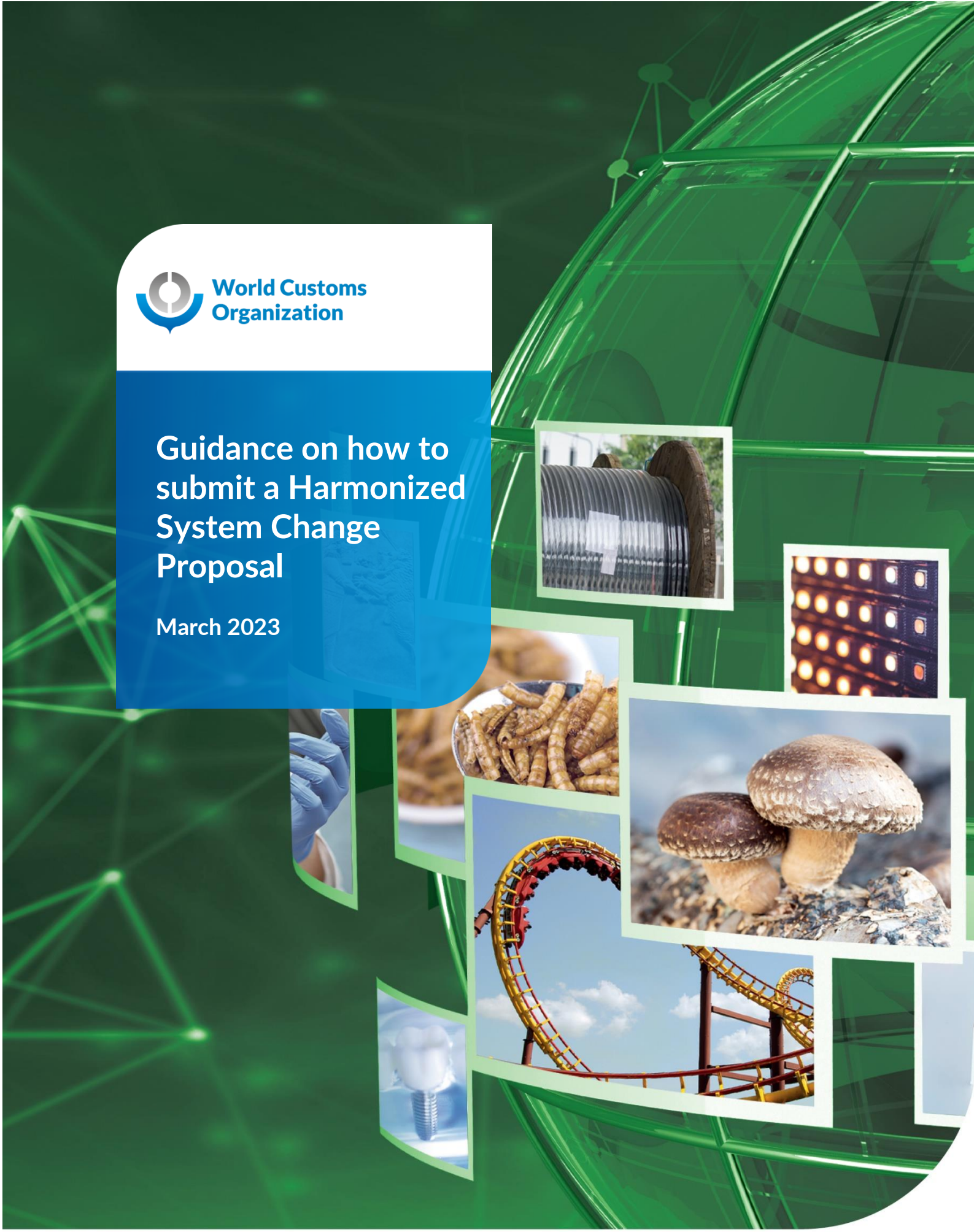
World Customs Organization

Guidance on how to submit a Harmonized System Change Proposal

March 2023



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Abbreviations

CP	A Contracting Party (a country or a customs or economic union) to the *International Convention on the Harmonized Commodity Description and Coding System* (HS Convention)
EN / ENs	Harmonized System Explanatory Notes, the official (but non-legally binding) commentary on the Harmonized System
HS	The "*Harmonized System*", the Annex to the HS Convention, formally known as the *Harmonized Commodity Description and Coding System,* and the system for classification of international trade to six digits
HSC	Harmonized System Committee, the Committee responsible for the HS
HS Convention	The *International Convention on the Harmonized Commodity Description and Coding System*
RSC	The Harmonized System Review Sub-Committee, a sub-committee of the HSC that is responsible for the drafting of changes to the HS.
WCO	The World Customs Organization (formally named the Customs Cooperation Council)

Foreword

This Guide addresses questions on how proposals for changing the Harmonized System can be put forward.

One of the fundamental requirements of the Harmonized System (HS) is that it must incorporate changes to recognise new products or technology, changing trade patterns, or the changing needs of governments. This requires people to conceive and bring into effect those changes.

All products arising from the human mind begin with an idea, with that identification that there is a need to be addressed, or a problem to be solved, or an opportunity to do something worthwhile.

But many of these realisations that something might, could or should be done never result in tangible changes simply because it is not clear to the people with the realisations how they could bring them to fruition.

For this to happen in the HS, new ideas need to be proposed, discussed, drafted, adopted, and implemented as a change in the HS, and consequently in tariff and statistical schedules across the globe. But many people are unaware of how to make that first formal step of a proposal. This document seeks to help guide you along the steps of proposing changes to the Harmonized System.

I encourage you to take that step. It is only through people putting their ideas on the table for discussion that we can keep the HS the bedrock instrument of trade. You can make a difference.

Kunio MIKURIYA

Secretary General

World Customs Organization

The Harmonized System (HS)

The Convention

The Harmonized System (HS) is implemented under the ***International Convention on the Harmonized Commodity Description and Coding System*** (HS Convention) and forms the Annex to the HS Convention.

The HS Convention was opened for signature on 14 June 1983. It entered into force on 1 January 1988. As of 1 March 2023, there were 160 Contracting Parties (CPs).

In terms of use, more than 200 countries and Customs or Economic Unions (most of which are Contracting Party to the HS Convention) use the System as the basis for their national Customs tariffs[1]. This number is expected to continue to increase over the coming years.

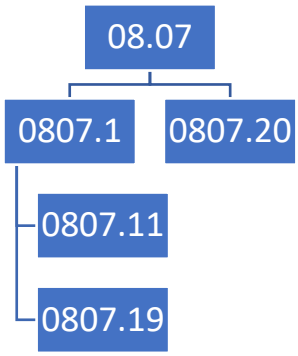
The HS Structure and use

The HS is implemented as a hierarchical listing of provisions intended to capture within their terms, that is their wording, all goods tradable physically across borders (plus it also includes electricity as a tradable physical good). It used to identify traded goods for both statistical and Customs purposes.

The HS is organized into 21 Sections, which are subdivided into 96 Chapters (Chapters 1 to 97 with Chapter 77 reserved for potential future use by the HS). The 96 HS Chapters are further subdivided into 1,228 headings and 5,612 subheadings in the current 2022 edition of the HS.

The provisions are at three levels: four-digit headings, five-digit subheadings and six-digit subheadings.

All goods are captured at heading level. If the heading is not subdivided, it ends in two zeros.



The five-digit subheadings are used to sub-divide goods within a specific heading, its parent heading, where a more detailed breakdown is required. A five-digit subheading can only cover a subset of the goods that are covered within the terms of its parent heading. If a heading is divided in this fashion, then all of the goods of the heading must be covered in its complete set of five-digit subheadings.

If a five-digit sub-heading is not further sub-divided at the six-digit level, then it ends in a single zero.

The six-digit subheadings are used to further sub-divide a five-digit subheading if required. As per above, a six-digit subheading can only cover a subset of the goods included in the five-digit parent subheading and all of the goods of a further divided five-digit subheading must be covered within its set of six-digit subheadings.

The six-digit subheading is the lowest level of sub-division in the HS. ***Any digit beyond the six digits is a division under a national or regional tariff and is outside of the scope of this tool.*** For change proposals at national or region al levels, contact the relevant national or regional body.

[1] http://www.wcoomd.org/en/topics/nomenclature/overview.aspx

In addition, Notes are provided with the HS. Notes are at the beginning of sections and chapters of the HS, but a Note at the beginning of a specific Section (Section Notes) or Chapter (Chapter Notes and Subheading Notes) may also affect other sections, chapters, or have affect over the whole of the HS.

Notes are legally binding and provide definitions of terms, exclusions and inclusions in relation to scope or directions in relation to the classification of goods and the use of the HS. All applicable Notes must be followed.

Notes.

1.- This Chapter does not cover inedible nuts or fruits.

2.- Chilled fruits and nuts are to (...)

The provisions are applied using a set of legally binding rules that must be applied to every classification made. These are the *General Rules for the Interpretation of the Harmonized System*, commonly known as the General Interpretative Rules or the GIRs. The GIRs are to ensure that the same process of classification is always followed, thereby securing a greater level of uniform application.

The order of the HS is mainly by economic activity or component material. For example, animals and animal products are found in one section of the HS, while machinery and mechanical appliances are found in another. Section and Chapter titles describe broad categories of goods, while headings and subheadings describe products in more detail. Generally, HS Sections and Chapters are arranged in order of a product's degree of manufacture or in terms of its technological complexity.

What if I am not familiar with the HS?

Understanding how the HS is structured gives a greater understanding of how it might be changed to achieve desired results.

For those who need to propose a change, but whose expertise is in other areas, it is strongly recommended that you work either with your Customs administration or with an expert in the HS to assist you.

If this is not possible, then be as clear as possible on what you want to change, why you want to change it, and what you hope to achieve. This will assist the WCO Secretariat and the Harmonized System Committee (HSC) in ensuring that, if approved, it is in the right place and format to achieve the desired outcome.

While the goodwill of the Secretariat and HSC, will assist, it should, however, be noted that the workload of both the Secretariat and the HSC is high, and the use of an expert who is adept at formulating HS proposals will generally increase the likelihood of a proposal being accepted.

General Rules for the Interpretation of the Harmonized System

Classification of goods in the Nomenclature shall be governed by the following principles :

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions :

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :

   (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

   (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

   (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein :

   (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character;

   (b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

How is the HS changed?

The authority for change

The HS Convention sets up the Harmonized System Committee (HSC) and, under Article 7, provides it with the authority to propose updates to the WCO Council.

ARTICLE 7
Functions of the Committee

1. The Harmonized System Committee, having regard to the provisions of Article 8, shall have the following functions :

   (a) to propose such amendments to this Convention as may be considered desirable, having regard, in particular, to the needs of users and to changes in technology or in patterns of international trade;

The HSC and its sub-committees bear the responsibility for the final drafting (usually in the Review Sub-Committee of the HSC) acceptance (by either consensus or two-thirds majority at the HSC itself) and forwarding of changes to the HS Council for adoption.

Review cycles

The Harmonized System (HS) is subject to a continually rotating review cycle, with each cycle resulting in a new edition of the HS every five years.

While the cycle is usually spoken of as a five-year cycle, reflecting the production of new editions, the work of a cycle lasts approximately seven years in practice. As soon as the draft Recommendation for a new edition goes to the WCO Council during the approval period, the negotiating period starts for the next cycle.

The Review cycle consists of:

- a negotiating period during which individual amendment proposals are received, drafted, and either provisionally approved or rejected;
- an approval period for the collated package of approvals, going through three stages, being by the Harmonized System Committee (HSC), the WCO Council and the Contracting Parties; and
- a two-year period for preparation for the implementation of the new edition of the HS.

What bodies or groups at the WCO are involved in drafting & approval?

The principal body for changes is the **Harmonized System Committee (HSC)**, but starting from when a proposal is received, there are six main bodies or groups that are involved in presenting, examining and approving HS changes.

A simple chart of the process is provided at Figure 1 Simplified chart of the drafting and approval process".

The Nomenclature Secretariat

The Secretariat of the Nomenclature Sub-Directorate receives change proposals and creates the working documents for the Sub-Committees and the HS Committee to consider. Depending on the complexity of the proposal, they may conduct research on the goods, issues and provisions involved, begin checks for consequential amendments if required, and provide advice for the consideration of the Sub-Committee or Committee. For proposals, they will also prepare a bilingual annex in French and English with the appropriate drafting instructions required to make the change if approved. They are also responsible for preparing reports on the outcomes of the meetings for approval.

The Secretariat will also incorporate approved changes into the package of recommendations and, once the recommendations are approved will do the preparation work for the implementation, including, but not limited to, drafting the correlation tables, checking requirements for any further consequential amendments in the Explanatory Notes (ENs) and the Compendium of Classification Opinions (CCOs) for consideration by the Committee, and the preparation and editing of the publications for the new Edition.

The Harmonized System Review Sub-Committee (RSC)

The Review Sub-Committee (RSC) is a sub-committee of the Harmonized System Committee (HSC), acting under the overall direction of the HS Committee. It has the following scope given within its terms of reference.

"3. Purpose and Scope

The purpose and scope of the Sub-Committee is to:

- pursue a review of the HS under the general guidance of the HS Committee;
- propose to the Committee such amendments to the HS as may be considered desirable having regard, in particular, to the needs of users and to changes in technology or in patterns of international trade; and
- prepare, to the extent appropriate, any consequential amendments to the Explanatory Notes and the Compendium of Classification Opinions for consideration by the Committee."

The RSC is responsible for the initial examination of proposals, the assessment as to whether to go ahead and the drafting of amendments.

It works on a consensus basis. If a consensus cannot be reached on whether to go ahead or on the direction to take, the question is referred to the HSC. Likewise, if the RSC has drafted the amendment, but there are still a few words or phrases without consensus, these are simply placed in square brackets for the HSC's decision.

The RSC meets twice a year, generally around May and November. All proposals for a meeting should be received at least eight weeks prior to the meeting.

The Scientific Sub-Committee (SSC)

While most HS changes do not go through the Scientific Sub-Committee (SSC), changes relating to chemical provisions or where the RSC or HSC are required to consider questions of a scientific nature may be sent to the SSC for advice.

The SSC is a sub-committee of the Council rather than of the HSC, however its largest body of work is in relation to HS classifications and changes.

The SSC meets once a year, generally in January.

The Harmonized System Committee (HSC)

The Harmonized System Committee (HSC) is the Committee responsible for all changes to the Harmonized System and it derives its set-up and responsibilities from Articles 6 & 7 of the HS Convention. All CPs are members of the HSC and can nominate representatives to attend.

The HSC is a voting body. For an individual amendment to gain provisional acceptance from the HSC, it needs to pass by either consensus, or, if a vote is required, with at least a two-thirds majority in favour of the amendment.

The HSC meets twice a year, generally around March and September. All proposals for a meeting should be received at least eight weeks prior to the meeting.

At the end of the negotiating cycle, so once every five years, all individual changes that have been provisionally accepted by the HSC are collated by the Secretariat into a Draft Recommendation, which then goes to the HSC as a package. The Draft Recommendation contains all the change instructions required to convert the existing edition of the HS into the new edition that reflects the provisional accepted amendments.

The HSC provisionally approves and refers the Draft Recommendation to the Council.

The WCO Council

The Council is the governing body of the WCO and consists of the heads of Member Customs administrations or their representative.

When the Council receives the Draft Recommendation, it agrees by consensus to recommend the acceptance of the draft recommendation and it is sent out to Contracting Parties to the HS Convention.

The Contracting Parties (CPs)

The Contracting Parties (CPs) have six months to consider the Draft Recommendation. If a CP puts an objection against any part of the changes, and that objection still stands at the end of the six months, then that part of the changes is removed and will not form part of the new HS Edition. This means that changes need full consensus. However, an objection at the stage of the Council would be very serious matter for any CP: it would effectively be one CP exercising a veto over all other 159 CPs who believe the change is necessary. This means that CPs work hard at the RSC and HSC level to resolve differences and the normal and expected situation is that no objections will be standing at the end of the six months.

The Draft Recommendation becomes an Accepted Recommendation at the end of the six months.

How does the Review Cycle timeline work?

As noted previously, the timeline is approximately seven years for a full cycle. This is best illustrated by taking a changeover-year. See Figure 2 Projected Review Cycle Changeover 2024" to see how the different stages of the HS27 and HS32 cycles are forecast to overlap in 2024 when the HS32 cycle commences.

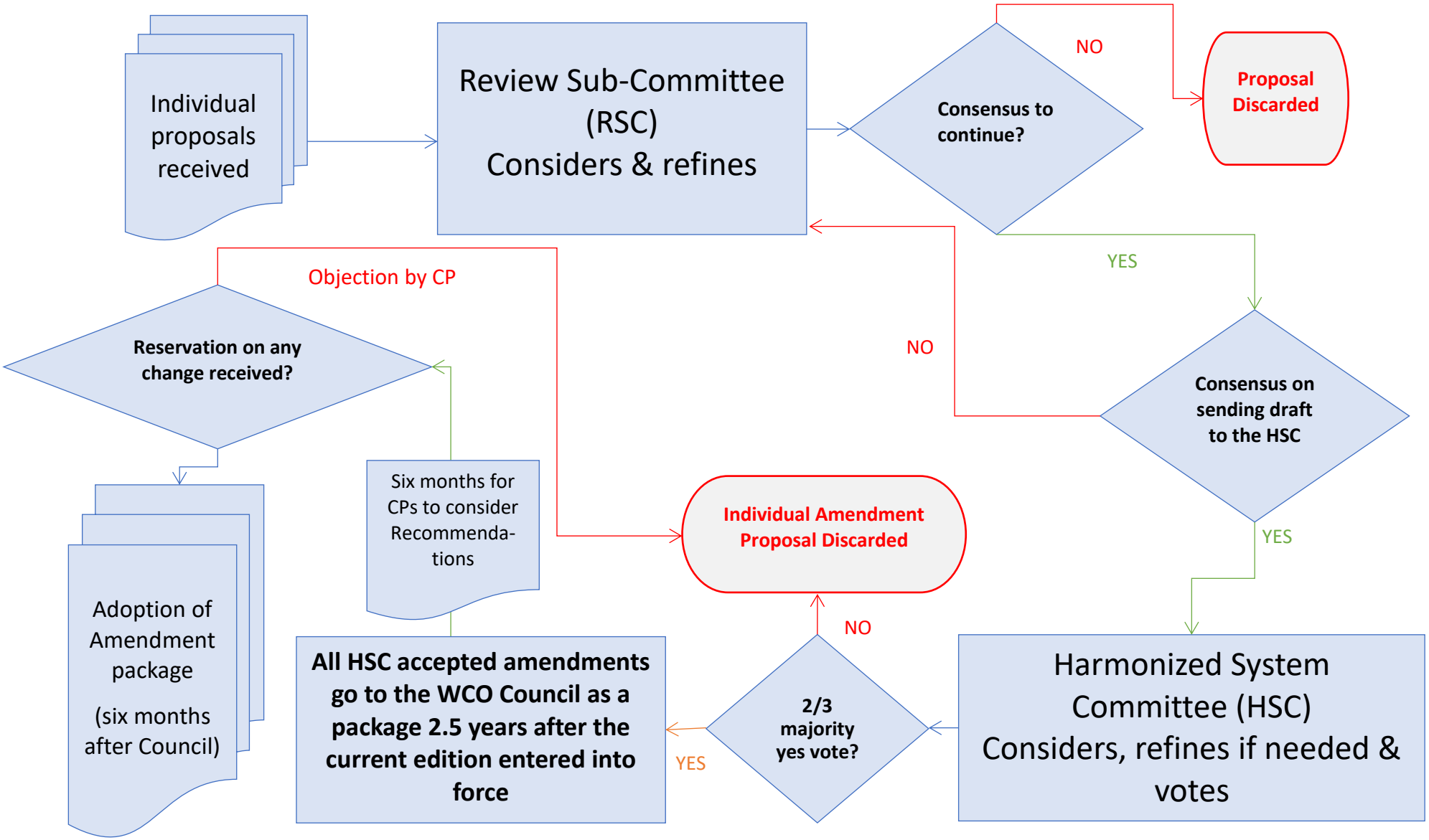


Figure 1 Simplified chart of the drafting and approval process

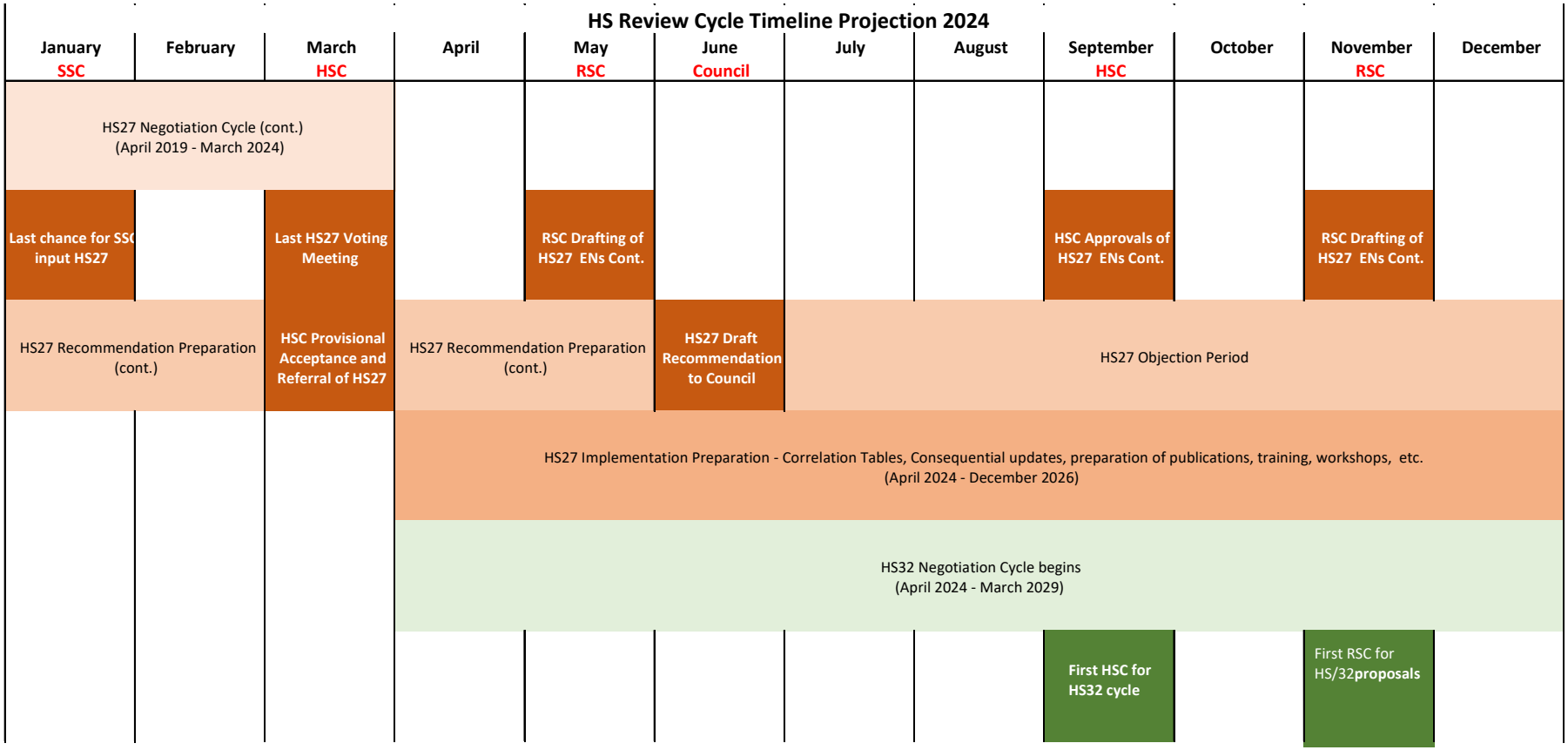


Figure 2 Projected Review Cycle Changeover 2024

Who can make proposals for HS changes directly to the WCO?

Contracting Parties (CPs) to HS Convention

The primary source of proposals for changes comes from the Contracting Parties, that is, the countries and customs or economic unions who have ratified the HS Convention.

Custom administrations

Proposals are normally made by the Customs administration of the CP or the administration who performs the relevant Customs functions in the CP.

Other administrations

While proposals are normally made by the Customs administration, proposals can be received from any other administration or agency of the CP. In some CPs, a separate administration or agency is set up for the management of tariff policy and tasked with this role.

In addition, other administration or agencies outside of the Customs and tariff policy areas can propose changes. However, the WCO would strongly advise in such cases that they do so either in consultation with or through the relevant Customs administration. In addition to the Customs administration having the expertise in the HS, they normally provide the delegates to the RSC and HSC who will be presenting, drafting, and voting on the proposal. Therefore, their understanding and support of the proposal is critical to its success.

The Secretariat (representing the Secretary-General)

Where the Secretariat has noted that there are ongoing issues with a particular type of good or area of the HS, then it is possible for the Secretariat to make a proposal. This is done sparingly.

The Council

If the Council wished to make a proposal for consideration by the Committee from the Council itself, this would be entered on the agenda automatically.

The Chairperson of the Committee

If the Chairperson wished to make a proposal for consideration by the Committee, this would be entered on the agenda automatically.

Who can make proposals for HS changes with the agreement of the HSC Chairperson

Other WCO Members

Acceptance of proposals that are not directly from Council, the Secretary General, or any Member of the Committee is at the discretion of the HSC Chairperson.

Non-CPs who are member countries of the WCO could seek to make proposals. However, these are subject to the approval of the Chairperson. As non-CPs have observer status only, **they are not able to vote on proposals**.

It is recommended that they become CPs if they wish to give proposals so that they can participate fully in the process.

Intergovernmental Organisations

Another major source of proposals are the intergovernmental organisations (IGOs), which make proposals on behalf of their members. For example, the Food and Agriculture Organization (FAO) makes proposals in relation to the areas of trade under its remit and for food security purposes.

As noted, acceptance of proposals that are not directly from Council, the Secretary General, or any Member of the Committee is at the discretion of the HSC Chairperson. In practice, proposals from IGOs are normally accepted routinely.

How can those without direct access make proposals?

The private sector, including trade and industry bodies

Proposals from the private sector are normally made to a country who is a Contracting Party (CP) to the Harmonized System. If the CP decides the proposal should be made, then they can bring the proposal to the HSC as a CP proposal.

The private sector is one of the major sources of proposals made by the CPs.

A CP, usually through its Customs administration, may put out a specific call for proposals for each cycle or offer a specific contact point for receiving proposals, depending on their arrangements. The CP will consider proposals and decide on which, if any, to bring forward.

A list of public contact points for HS matters, where these have been provided, is maintained on the WCO website.

International umbrella organisations for trade sectors who are unsure of which CP to approach can contact the Secretariat for assistance in locating appropriate contact points or consult the list of contacts on the WCO website (https://www.wcoomd.org/en/topics/nomenclature/resources/contacts.aspx).

Non-governmental organisations (NGOs)

NGOs can also approach CPs, usually through their Customs administration, with proposals. In addition, if an NGO is working in association with and IGO, then they can consider also working with the IGO on any proposal if this is within the framework of the organisations.

NGOs who are unsure of which CP to approach can contact the Secretariat for assistance in locating appropriate contact points or consult the list of contacts on the WCO website (https://www.wcoomd.org/en/topics/nomenclature/resources/contacts.aspx) .

How do I submit an HS change proposal?

If you do not have direct access to send a proposal to the WCO

If you are sending a proposal to a Customs administration or other government body responsible for HS negotiations, **then please consult with the relevant authority on what the requirements are to submit a proposal**.

While the rest of the information in this tool is for government administrations or intergovernmental organisation who are able to send proposals directly to the WCO, it may be helpful to read the remainder of this tool. It gives an indication of what type of information the administration will need to send through if they choose to act on your proposal.

Can I contact you for information or assistance prior to the proposal being submitted?

For those who need to submit via a Contracting Party, the WCO cannot directly assist with proposals. However, we can *usually* assist in directing you to the appropriate contact point in the relevant administration where we have that information available.

If you need assistance with this, you can contact us by via our internet site www.wcoomd.org or by email to the Director of Tariff and Trade Affairs or the Deputy Director of Tariff and Trade Affairs.

If you can submit a proposal directly

Proposals can be sent to the WCO, addressed to any of the following: the Secretary-General, the Director of Tariff and Trade Affairs or the Deputy Director of Tariff and Trade Affairs.

If you do not have the appropriate email addresses, simply contact the WCO via our internet site www.wcoomd.org for the appropriate contacts.

Can I contact you for information or assistance prior to the proposal being submitted?

For those who have the ability to submit a proposal directly to the WCO, you can contact us by an email addressed to the Director of Tariff and Trade Affairs or the Deputy Director of Tariff and Trade Affairs, for further information and assistance.

What form does an HS change proposal take?

There is no set format for a proposal. Successful proposals in the past have come in from short one-page requests to detailed proposals with tens of pages of material.

For practical purposes, we ask that they are submitted in MS Word format (or if you do not use MS Word, then in a format that can be read by MS Word) as this simplifies the creation of the required meeting documents.

Any proposal should cover the following:

- the goods to be covered;
- where the goods are currently classified;
- how the goods can be identified at the borders;
- for new headings or subheadings, any available information on the value of trade (in US$); and
- why the proposal is being made

While there is no set order or style for covering these aspects of a proposal, the following sections give some guidance on the usual approaches and what should be covered as a minimum.

The overall primary guidance in writing a proposal is to first ask yourself the following questions.

Do I know what I want to cover in terms of real goods?

Could I identify those goods if I was standing at the border?

Am I very clear on why I want to do this?

If you can answer these questions positively, then you are ready to start writing.

What is required in an HS change proposal?

There are two basic areas to cover – what you are proposing and why you are proposing it.

What are the goods to be covered?

To create a provision for certain goods, then it must be known what those 'certain goods' are.

This is the most fundamental requirement, but one that can be difficult to do well.

As a minimum, there needs to be a clear description of the goods. The clearer the description, the easier it is to create a new provision.

An understanding of the scope of the intended coverage is essential to determining the required wording and placement of the new provision and whether it needs legal Notes to ensure it works.

In defining what the goods are, it is useful to ask yourself some basic questions.

Can I describe the goods in a single sentence?

If you can describe the goods clearly in a single sentence, then this gives a good basis for making a feasible proposal for creating terms.

If you can't define the goods in a single sentence, what else is needed? A definition? A list of inclusions or exclusions? This may mean that supporting legal notes need to be considered either in the proposal or by the Committee.

The level of specific details required depends on how alike these goods are to other goods not covered.

For example, 84.01, the very first heading of Chapter 84 has as its first group of goods "Nuclear reactors". It is relatively easy to identify if something is or is not a nuclear reactor, so while there is an Explanatory Note to explain, in some detail, what is included in a nuclear reactor, for the legal provision, the name is generally sufficient.

If we move to the next heading, 84.02, its first group is steam or other vapour generating boilers. But this is a description which could also cover central heating hot water boilers that are *not* intended to be covered: meaning the description requires a little more detail. This provision incorporates an exclusion in the terms and reads "Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam)".

Once you have your description, it can be helpful to do some quick "tests" of its clarity. One good way to test your description is to trial it with a varied group of people not involved in its development. You could:

- showing then examples of the range of goods you want covered and ask them how they would describe the group of goods;
- give them the description and ask what they think would be covered; or
- giving them the description and some example goods, including ones that should be covered and ones that should not, and asking which of the goods would fall under the description.

The better you understand what you want to be covered and the better you explain it in the proposal, then the more likely it is that any final wording will cover what you intended to cover.

One last point here. In defining what you want to cover, if possible, choose the *simplest* method to define and identify the goods that is compatible with the policy needs behind your request.

Often, there are multiple ways to approach describing goods and each has positive and negative aspects. For example, if you wanted to describe an everyday item like, say, 'single-use plastic cutlery', there might be multiple ways to approach defining the group of articles intended to be covered.

- You could come up with a definition of single-use.

  This has the advantage of being able to target exactly what you want. But it would need agreement on the definition from CPs and the quality of the definition will affect how easy it is to apply at the border.

- If they are always, or close to always, of certain types of plastics or below certain weights, then you could specify physical specifications.

  This has the advantage of being objective, relatively easily tested, and provable in courts. But it may or may not be possible or practical to give such specifications. It could also lead to circumvention strategies such as changes in composition or slight changes in weight.

- You could make a proposal that is for any plastic cutlery that would usually be single use, that is "of a kind commonly disposed of after a single use".

  This allows for all plastic cutlery that is of the disposable type, regardless of intended use, and is a familiar formulation to Customs and traders, being used quite frequently in the HS. But this formulation does have some subjectivity in terms of "commonly".

These are three examples, but of course, there may also be other strategies for defining the scope that would fit the policy intent.

Choosing the formulation that is the *simplest to administer* helps keep the HS user-friendly and increases the likelihood of acceptance.

If in doubt as to what is the simplest, alternatives can be offered in the proposal.

Are there goods that should be excluded from the proposed provision?

This relates to identifying the exclusions that are necessary.

As we noted above with nuclear reactors, sometimes the term covers anything that could be reasonably covered by the term so there is no need for new legal exclusions. For some provisions, such as the steam boilers, the exclusions required are simple enough to be part of the description. But there are times when more complex exclusions will be required.

If there are exclusions that are required and this is not clear, then there is an increased risk that they will be missed, and your provision will cover unintended goods. Therefore, this is something to be considered early.

Where are the goods currently classified?

All tradable goods are already classified. If you make a new provision, then you are moving goods from one or more existing provisions.

The simplest proposals for this are normally those that simply split a current heading or subheading. For example, if you wanted to split out fenugreek seeds and bay leaves from sub-heading 0910.99 into new provisions, then you already know where they are classified.

The more difficult scenario is where the goods are a new category for the HS, that is, they group together goods currently classified in a range of different headings. If instead you wanted to create a provision for 'pre-cooked meals consisting of at least three major components and put up in individual servings requiring only heating before consumption', then there would be goods moving from multiple headings and chapters.

Changes to the HS are expected to be duty neutral, that is CP will carry the duty currently applied to goods over to the new provision. However, if there is often a wide duty differential between the goods being combined, then understanding this is important and it can impact. For example, the RSC or HSC may decide to draft the new provision with subheadings, not in the original proposal, to simplify duty transfers.

If possible, the headings from which the goods come from should be specified in the proposal.

How can the goods be identified at the border?

An HS provision becomes part of the legislation of countries, so it **must** be enforceable.

If you are standing at the border looking at the intended goods or similar goods, what is that will confirm for you that these goods should be under this new provision? Would it stand up to judicial scrutiny?

This question is seeking the *key* elements that define the goods as in scope.

Again, the level of detail needed depends on how easily such goods are differentiated from goods that are not covered.

The goal should be to make it as simple as possible.

If we look at an example, the expression "babies' garments and clothing accessories is defined for the purpose of heading 61.11 as "*articles for young children of a body height not exceeding 86 cm*". This removes questions such as "at what age do children stop being babies" that may be answered differently in different countries and is relatively easy to assess. Although it may mean that some garments are classified a little differently than people might think depending on their definition of "baby" what it does do is make the classification of goods in relation to heading 61.11 simple and predictable.

Of course, it is not always that simple. For example, to define the goods of headings 85.41 and 85.42 takes a legal Note with one thousand and seventy-three words.

Other goods may require chemical or physical analysis or proof of analysis to identify. These requirements are usually given in the legal Notes, for example, anthracite is defined as "For the purposes of subheading 2701.11, "anthracite" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) not exceeding 14 %.", so if there was a doubt, then it would require a check of the physical composition to confirm.

The identification of many goods simply depends upon them being identifiable as the goods named. For example, there is no legal definition in the HS for "Dish washing machines", it relies on a common understanding of the terms in general parlance, backed up by the Explanatory Notes.

Other terms may not be well known by the general public, but have a consistent meaning in the relevant industry or profession, for example, "photogrammetrical surveying" has a consistent definition in the relevant industry and this, backed up with the Explanatory Notes, is what is relied upon for identification. For any goods relying on understanding in common use or in the relevant industry for classification, it is essential that there is a *consistent* understanding globally.

Remember that the principal goal of the HS is to achieve harmonized classification among CPs. If you cannot find a way to clearly identify the goods at the border, then there is a substantial risk that it will be applied inconsistently.

In such cases where a means of identification cannot be found, it is important to consider if there is an alternative method for identifying trade in these goods, for example, post-border measures or national requirements to check documents and record statistics.

A rationale for the change: why should the HSC accept this proposal?

There are millions of products, but limited capacity for creating very specific groups within a Customs nomenclature with a six-digit limit that must cover them all. This means that new provisions are not added lightly. There are basically six broad reasons considered at in this process.

While falling into one of these categories is not enough on its own to ensure that the Committee will accept, they will have a higher chance of going through if there is a very clear justification under one of the below categories.

NOTE: most proposals fit **more than one** of the below categories. You may also have reasons that are not listed. This section is simply to assist you by describing the most common reasons given for proposals.

The goods are of high economic importance in global trade

If a heading is proposed based on the economic importance of the goods, then the HSC looks at the trade value of the goods to see if they meet the thresholds for creation on this basis.

The values are not high. Currently (as of March 2023), the HSC has thresholds for the creation of a new subheading of 50 million USD in trade and 100 million USD for a new heading. Please note that these values may change for the HS 2032 cycle.

Any available information on the value of trade in the goods, or reasonable estimates of this value, should be included. As reliable estimates of global trade value are difficult without a specific HS code, looking at trade reported from countries that specify these goods at the national or regional level can be useful. If this isn't available, then estimates of the industry and trade value from other reliable sources can be included as indications of expected global trade value.

The goods are of high economic importance to developing countries

One area where the value of the trade can be lower is where the trade is of particular importance to developing or least developed countries.

There can be established or emerging trade in products of developing economies that contributes significantly to their economic development without reaching the above threshold values. If Members have a need to establish international codes to support this trade, then the proposal can be made on the grounds of the trade being vital to developing countries.

The goods are required to be identified at the border under international agreements

Where an international convention or agreement requires Customs to identify, monitor or control goods at the border, then a specific heading or subheading can be considered regardless of the value.

For example, many goods controlled under *The Montreal Protocol on Substances that Deplete the Ozone Layer* would not meet the economic thresholds. Provisions are made to enable governments to meet their requirements to identify these goods at the border.

Such proposals are usually made by the Secretariat to the specific international agreement on behalf of the contracting parties to the agreement.

The goods are of social or environmental importance

This is the widest and most diverse group of proposals. It covers a wide range of goods that are important to the well-being of populations.

Provisions relating to this area created in the past include provisions relating to:

- the protection of the health of populations, such as vaccines, diagnostic testing kits, malaria treatments etc.;
- food security to cover specific species used for food;
- dual use goods that could be diverted for terrorist use, such as biological safety cabinets, detonators, etc.;
- goods identified as environmentally preferable or environmentally positive, such as LED products, solar products, bamboo and rattan products, catalytic converters, etc.; and
- goods identified as, or potentially as, environmentally dangerous, such as electronic waste, and certain chemicals falling under both this and international agreements; and
- more specific coverage of different types of goods that are important to cultural heritage

If you need to make a proposal that relates to protecting populations, protecting the environment, working to reduce or mitigate climate change, or any other areas that relates to the well-being humanity and planet, then it is probably going to be considered on this basis.

But even if you can quote a global good, it still needs consideration. Let's look at an example. There has been interest in the past for creating provisions for biodegradable plastic bags. But even this apparently simple aim can raise questions about whether the rationale is achieved by the proposal. Members can question, for example, if it would be preferable to highlight plastic alternatives or reusable plastic bags instead if the reason is to substantially reduce plastic pollution from plastic bags. They might ask whether the end products of the biodegradation will be safe, or if there are different levels of environmentally preferable products under the broad scope of the term.

If you are making proposals on the basis of social or environmental effects, it is useful to be very clear on how this proposal will contribute to that goal.

The change is needed to reflect technological changes in trade or changing trade patterns

This is an essential area of change.

The HS Convention was opened for signature in 1983. In the same year, Apple released Lisa - the first commercial personal computer with a graphical user interface. This exciting new high-tech beast had 1 MB of RAM, a 12-inch black-and-white monitor, dual 5.25-inch floppy disk drives and a 5 MB hard drive. Quite a lot has changed since then.

As new technologies and industries develop, what needs to be separately specified changes.

For example, we no longer have a subheading specifically for gramophone records nor one for pocket-size cassette-players, both of which now fall under 'Other' provisions. We do now have separate provisions for smart phones, drones and electric cars.

If making a proposal for separately specifying a new technology, give information on why it is important to be able to separately identify these goods. Is it or will it be a high-value trade stream? Does the industry need support? Are there significant regulatory issues? Is it combined with one of the other reasons, e.g., 'new technology and ambiguous classification', or 'new technology and environmentally significant'. Generally if you say why you chose these goods as worth the work of a proposal, then you have your rationale.

Technology changes can also affect the terminology and how industry groups and describes goods. This may mean that the terms of a provision may no longer reflect what today's industry recognises. Heading 84.62 is an example of a heading that was substantially reworked for HS2022 to reflect current industry terminology and practice.

Technical changes, corrections and clarifications

This covers a range of changes that are designed to improve the operation of the HS. These include removing misalignments between French or English or correcting minor errors.

More serious issues that may need to be addressed include improving existing provisions where a provision is found to be ambiguous, empty, or subject to multiple disputes or misuse.

For example, HS2022 removed subheading 3002.19 as all of the goods covered by 3002.1 were covered by the preceding subheadings, leaving 3002.19 empty.

Another such change was adding the words "including thermosensitive" in Note 2 to Chapter 37. It was agreed that the definition of photographic in the Note already included thermosensitive surfaces without the addition, but explicitly stating it would make it simpler for users.

> "In this Chapter the word "photographic" relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive, including thermosensitive, surfaces."

The original motivation for the explicit inclusion of "smartphones" in HS2022 was also to clarify their coverage as classification had been challenged in multiple countries.

Other reasons?

The above are the main reasons for making a proposal, but of course, if there is a different reason, then simply present it as part of your proposal.

Can you supply an example of a proposal?

Proposals are normally introduced at the Harmonized System Review Sub-Committee (RSC), and RSC documents, being part of negotiations, are not made public. However, with permission of the HSC, the Secretariat has provided the following example of a proposal from the Secretariat itself.

The example given includes:

- what goods the proposal covers (paragraph 5);
- where they are currently classified (paragraphs 6-10);
- the rationale for making the proposal (paragraphs 1-4, 11-12, and 18-19); and
- how it is proposed to identify the goods (paragraphs 15-17)

The original proposal included the Annex which gave the proposed changes.

As noted, this is just an example and proposals can look very different from this.

The form and style are far less important than ensuring it covers well what the goods are, including if possible where they are currently classified, why this proposal is made and should be adopted, and how to identify the goods.

Example of a proposal that led to a change in the HS

POSSIBLE AMENDMENT TO THE NOMENCLATURE TO CREATE A SUBHEADING AND A SUBHEADING NOTE FOR "SMARTPHONES"

(PROPOSAL BY THE SECRETARIAT)

1. The Secretariat notes that the mobile phone industry has made great progress in the technology of mobile phones and, in particular, the trade volume of so-called "smartphones", has increased significantly. However, the Harmonized System (HS) codes do not adequately reflect the current developments in technology and trade.
2. The HS Nomenclature does not provide a separate HS code and a clear definition for smartphones, thus making it difficult to collect accurate statistics of trade volume for these devices. Further, it has been brought to the attention of the Secretariat that some administrations have difficulties classifying smartphones.
3. Therefore, bearing in mind the remarkable increase of the trade volume of smartphones and the difficulties in their classification, the Secretariat proposes to create a separate subheading to heading 85.17 and a subheading Note to Chapter 85 for smartphones to facilitate their classification as well as the collection of trade statistics.
4. It should be noted that the category of smartphones today represents a significant part of global mobile phone market. Statistics show that in 2016, the global sales value of smartphones amounted to 434.5 billion U.S. dollars and the number of smartphones sold worldwide reached about 1.5 billion units. (https://www.statista.com/statistics/237505/globalrevenue-from-smartphones-since-2008/)

5. The category of smartphones covers multifunctional cellular phones equipped with various features such as an operating system (OS) capable of running applications provided by third-parties; an input device, such as a touch-screen; integrated photo and video camera; GPS; Bluetooth and Wi-Fi; sound recording and reproducing equipment; internet connection, etc., which enable them to perform multiple functions.

Classification

6. As smartphones are composite goods capable of performing various functions specified in different headings of the Nomenclature, it is necessary to examine the applicability of GIR 3 (b), which specifies that goods shall be classified according to the element which gives the whole its essential character. Therefore, the first step of classification is to identify which function gives the smartphones their essential character.

7. The Secretariat is of the view that, among their multiple functions, the ability to perform communication in wireless networks gives smartphones the essential character, thus determining their classification in heading 85.17, by application of GIRs 1 and 3 (b).

8. For classification at subheading level, in the Secretariat's view, the terms of the one dash subheading 8517.1 which specifically mention "Telephone sets, including telephones for cellular networks or for other wireless networks" identify smartphones clearly and, accordingly, they are goods of subheading 8517.1.

9. Within the scope of subheading 8517.1, the following subheading provides for the classification of smartphones: 8517.12 - - Telephones for cellular networks or for other wireless networks.

10. Therefore, the Secretariat is of the view that smartphones are classified in heading 85.17, by application of GIRs 1 and 3 (b), more precisely in subheading 8517.12, by application of GIRs 1 and 6.

Problems

11. However, it is reported that some administrations face disputes with traders over the classification of smartphones due to their various features and functions. Moreover, considering the rapid technological development in this field, it is expected that more features and functions will be added to smartphones in the future, which may make it even more difficult to classify them.

12. Furthermore, as subheading 8517.12 covers not only smartphones, but also other telephones for cellular networks or for other wireless networks, it is difficult to collect accurate trade statistics for smartphones, although being important goods in the trade.

Amendment proposal

13. Therefore, the Secretariat proposes to create a subheading under heading 85.17 to classify smartphones separately from other wireless phones and a Subheading Note to Chapter 85 to provide the definition of smartphones to facilitate classification and collection of trade statistics.

14. In this regard, the proposed new Subheading Note defines the term "smartphones" by reflecting their intrinsic technological features, so that the scope of the new subheading can be definitely distinguished from other HS codes.

15. The Secretariat investigated the definition of the term "smartphones" and, although there is no industry-wide adopted standard definition for smartphones, they can generally be defined as follows, based on the investigated technical information.

16. "Smartphones" are defined as cellular telephones that also have multiple integrated features relating to the creation, transmission, reception, or manipulation of data other than voice. The set of integrated features must include:

    - a [mobile] operating system (OS) capable of downloading, storing, and running third-party applications;
    - the ability to execute, without human intervention, a processing program that requires modification of execution, by logical decision during the processing run;
    - one or more input devices, normally including a touch screen; and
    - Internet connectivity to both cellular [data] networks and other wireless networks

17. The Secretariat invites administrations to confirm whether the definition of smartphones described in the above paragraph is in conformity with the current technologies used by their industries.

Trade volume

18. Finally, the Secretariat informs the Sub-Committee of the fact that the trade volume of smartphones would be enough to create new subheadings, taking into account the statistics of smartphone sales value in the last three years as provided below, which is far above the threshold of fifty million USD of annual trade value for new subheadings:

Smartphone sales value worldwide (in billion U.S. dollars)

Year	2014	2015	2016
Sales value	380.2	398.1	434.5

Source: STATISTA, Inc. Global smartphone sales value by region 2013-2017
https://www.statista.com/statistics/412145/global-smartphone-sales-value-global-region/

19. In the light of the foregoing, the Secretariat has prepared draft amendments to the Nomenclature, which are set out in the Annex to this document

[This was followed by an annex containing the original proposals for a new subheading and legal Chapter Note]

Timing is often far more important than perfection

Few proposals are adopted without further work.

It is common for questions to be asked and changes to be made. So if you have a proposal that you think is sound, but you are not quite sure if it is "good enough", still send it in. If very unsure, you can seek assistance from the Secretariat on what might still be needed.

However, if it arrives too late for approval in a particular cycle, then it will have to wait up to seven years before it has a chance to go into force. So getting proposals in as soon as possible in a cycle is important.

For the final point:

All changes in the HS begin with a proposal,
so if you want your change to happen, make the proposal

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