

Business Sector's Opinion

HS Revision and Transposition of PSRs

WCO Workshop on the Updating of Preferential Rules of Origin

WCO Headquarters, Brussels

6-7 February 2017

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Ideal update of PSRs for the business sector

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➤ Predictable PSRs

- To avoid any trouble which stems from the imprecise origin determination as a result of the HS revision.

➤ Transparent PSRs

- To smoothly undertake preferential trade and facilitate Customs clearance in the importing country. Whenever there are substantive changes in the PSRs, such changes must be informed clearly in plain language well in advance of the entry into force of the HS revision.

➤ User-friendly PSRs

- Business sector much appreciates technical update of PSRs. However, the results (or presentation of updated PSRs) should be simple and not overly complex.

**WHEN a HS heading changes its coverage,
without changing the meaning of the CTH rule,
how should the transposition of the CTH rule be done?**

A simple hypothetical example: the case when a heading is split into two headings

HS edition	Heading No.	Coverage of the heading	PSR
Current (1 st)	77.01	P and Q	CTH
Transposition of a CTH rule in accordance with the revision of HS			
New (2 nd)	77.01	P	CTH, except from heading 77.09
New (2 nd)	Newly created 77.09	Q	CTH, except from heading 77.01

What will happen if importers ignore or are unaware of the changes made to the simple CTH or CTSH rule by the HS revision?

Example of the previous page:

Assuming that for the production of the goods of heading 77.01, non-originating materials of heading 77.09 were used believing that the meaning of CTH under the new edition of the HS is unchanged.

- **Undoubtedly, the case shall be a good target for the post-clearance audit.**
- **Who is responsible for this?**
 - ⇒ Certifying authority, because the C/O was issued
 - ⇒ Exporters/producers, the goods are certified by them
 - ⇒ Importers, because the goods are certified by them or, at least, they claimed for the preferential duty
 - ⇒ Customs (importing side), the information was not widely and precisely shared with the importers
 - ⇒ Foreign/Trade Mins., reluctant to update or renegotiation

Is this matter ignorable for the business sector?

➤ NO!

As long as Customs disseminates sufficient information, ignoring or negligence of sharing sufficient information of the technical transposition will put the importer at risk of paying additional duty and/or administrative penalty.

➤ Is there a way to avoid this risk ?

- What should the business sector do ?
 - What is expected from Customs ?
 - What is expected from WCO ?
- } Later!

➤ First of all, why is the transposition of PSRs made necessary ?

Why is the transposition of PSRs made necessary?

Because: (systemic issue)

(i) **HS changes every 5 years;**

👉 **Solution? = Not to revise HS? - *Expressed during the HWP around 2002 by the TRADE people.*** – Such a “HS” is no longer the HS as a multi-purpose nomenclature.

👉 **Another solution? = Using HS, but fix the edition of HS** (different HS coexist for classification and origin) – **Unfortunately, this is a default form in many countries at the moment.**

👉 **No solution** – Although the HS is not made for origin purposes, ROO enjoy merits of using HS as a multi-purpose nomenclature, all over the world. We have understood the issue this way, but . . .

Why is the transposition of PSRs made necessary?

Because: (substantive issue)

(ii) a tariff-shift rule is used in the PSRs;

👉 **Solution? = Not to use the tariff-shift rule, i.e., VA rule only**

e.g., **General rules** (VA rule only) and **no PSR** ----- MERCOSUR style

- **However, the tariff-shift rule is *de facto* standard for preferential ROO** (WCO study: **73%** of the 20 largest FTAs).
- **VA rule is unpopular with the business sector due to the exposure of price info to the buyer.**

👉 **Another solution? = A general rule alone provides a straight CTH rule (no other rules) – We know that this is not possible!**

Why is the transposition of PSRs made necessary?

Because: (legal drafting issue)

(iii) edition of the HS is specified in the PSRs

👉 **No solution** – for clarity, transparency & preventing trouble in case of verification, applicable HS edition must be indicated in the PSR

Seeking the second-best option:

- ◆ **General rules** and PSRs as **exceptions** only ----- previous EU style,
- ◆ Nominal general rule and **exhaustive list** of PSRs ----- US style, or
- ◆ Hybrid: **general rules** and **exhaustive list** of PSRs ----- ATIGA style

⇒ **Regardless of the style of PSR presentation, updating is equally burdensome**

Business sector's points of view

Options for government	Analysis
I. Legitimately not necessary	<ul style="list-style-type: none"> • Value-added rule only • Unpopular VA rule may not be a standard
II. Ignorance or unintentional inaction	<ul style="list-style-type: none"> • Situation in many countries • Trouble anticipated by the Post-Clearance Audit • Traders should not be held liable for imprecise origin determination
III. Deliberate inaction by negligence	<ul style="list-style-type: none"> • Situation in many countries • Trouble anticipated by the Post-Clearance Audit • Traders' liability being same as II above
IV. HS to determine PSRs Hypothetical method	<ul style="list-style-type: none"> • Merit of ONE HS for classification & origin • If not properly disseminated, same liability as II & III above

Suggested method for easing technical update

- just a thought -

Q: Is technical update really “technical”?

A: If really technical, update is easily done by a group of experts on HS and origin. In reality, update entails “negotiation”, doesn’t it?

If that is the case, from business sector’s point of view,

For trade facilitation, which is rational and preferable?

- Classifying goods by HS 2017, determining origin by fixed HS 2002, or
- Classifying and determining origin by 2017 with some changes in PSRs

Simple question to Government.

In FTA text, why not state “applicable HS shall be the current edition in use in the party”?

A thought for consideration

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First of all, why tariff-shift rule is taken?

- Relying on the HS structure: raw/crude ⇒ intermediate ⇒ processed
- When new (sub)heading is created, actual trade has increased; when deleted it lessened
- CAN WE TRUST HS structure for origin determination?
- If agreeable, should we have to TECHNICALLY update ALL PSRs?
- PERHAPS, we may “accept old CTH as new CTH” in principle, regardless of HS edition
- SO,
 - **Technically update only necessary ones**
 - **When results of technical update make the rule too complex, then “renegotiate” for a simple rule**
 - **Maintain the principle of ONE HS for classification & origin determination**

Re: legal drafting, merit of hypothetical method

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HS edition	Heading No.	Coverage of the heading	PSR
Current (1 st)	77.01	P and Q	CTH
If the product is “sensitive” or any other reason to maintain the original meaning:			
New (2 nd)	77.01	P	CTH, except from heading 77.09
New (2 nd)	Newly created 77.09	Q	CTH, except from heading 77.01
If we can rely on the HS structure to be a basis for origin determination:			
New (2 nd)	77.01	P	CTH
New (2 nd)	Newly created 77.09	Q	CTH

Re: legal drafting, precise transposition will make the presentation of rules complex. Repeated technical update may require someday renegotiation for simplification.

HS edition	Heading No.	Coverage of the heading	PSR
Current (2 nd)	77.01	P (P1 + P2)	CTH, except from heading 77.09
Current (2 nd)	77.09	Q (Q1 + Q2)	CTH, except from heading 77.01

Under the new HS, the rule looks complex. What will happen if this process continues 3 or 4 times?

New (3 rd)	77.01	P1 + X	CTH and change within this heading from X, but not from headings 77.09 and ex77.10 (P2)
New (3 rd)	77.09	Q2 + Y	CTH and change within this heading from Y, but not from headings 77.01 and ex77.10 (Q1)
New (3 rd)	77.10	P2 + Q1	CTH, except from headings ex77.01 (P1), ex77.09 (Q2)

Transposition: Possible ways to proceed

Options for government	Analysis
I. Legitimately not necessary	<ul style="list-style-type: none"> Value-added rule only Unpopular VA rule may not be a standard
II. Ignorance or unintentional inaction	<ul style="list-style-type: none"> Situation in many countries Trouble anticipated by the Post-Clearance Audit Traders should not be held liable for imprecise origin determination
III. Deliberate inaction by negligence	<ul style="list-style-type: none"> Situation in many countries Trouble anticipated by the Post-Clearance Audit Traders' liability being same as II above
IV. HS to determine PSRs Hypothetical method	<ul style="list-style-type: none"> Although hypothetical, merit of ONE HS for classification & origin If not properly disseminated, same liability as II & III above
V. Transpose precisely	<ul style="list-style-type: none"> Basically, this is the starting point Technical update would entail voluminous and complex PSRs - lots of split (sub)headings, excluded (sub)headings
VI. Negotiate new PSRs	<ul style="list-style-type: none"> Had updated PSRs become too voluminous and complex, this would be an ideal way (but time consuming)

What we tell the business sector

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- ◆ **Stay engaged; pay attention to the HS information on one's own products, which is (hopefully) made available at the Customs or WCO website**
 - 2 years to prepare for the new rule
- ◆ **Consult with Customs (for importers) or Certifying Authority (for exporters) to ensure one's judgement on the new rule is correct**
- ◆ **Inform such information to counterpart for confirmation**
(importer → exporter → producer; producer → exporter → importer)
- ◆ **Based on consultations, request Advance Ruling in time for the 1st shipment under the new HS**
- ◆ **Where appropriate, consult with lawyers to prove that traders are not held liable for the imprecise origin determination caused by the HS revision**

What is expected from Customs ?

- ◆ Provide **detailed information** by website and other means: (i) how it is changed; and (ii) what the implications of this change are, **in plain language**
- *Adjusting the concession table and PSRs at the same time – may not be Customs jurisdiction though*
- *If not updated without detailed explanation, wish Customs mitigates the imposition of additional duty & penalty for the imprecise origin determination caused by the **HS revision** – in such a case, importer is no longer liable for the mistake.*
- ◆ **Consultations be made available. Advance Rulings be issued, even before the entry into force of the new HS (if possible)**
- ◆ **In case of inconsistency between Customs and Trade/Foreign Ministries re. transposition, Customs perhaps to lead to streamline**

What is expected from WCO ?

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- ◆ **Precise and authoritative information highly expected, since the WCO has the technical competence in both HS and ROO.**

sufficiently cover full details of HS revision, **not only correlation table but details of which exact goods moved to which (sub)heading(s)**, so that the national Customs administration is able to fully disseminate the appropriate information
⇒ *This will also facilitate the “negotiations for update” between FTA partners*

- ◆ **On its website, to place some actual examples of update as possible guide for national Customs in their updating other PSRs**
- ◆ **Publishing “**Guide for Technical Update of Preferential Rules of Origin**” is an excellent first step forward. Continuation of this type of study and publications highly desirable.**

In Summary

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Business sector wishes governments to maintain the predictable, transparent and user-friendly pref. ROO.

- Technical update of PSRs is as important and urgent as adjusting tariff concessions.
- Consequences of ignorance or inaction of technical update will cost importers when verification is undertaken by Customs, unless Customs mitigates imposing additional duties or penalties.
- Theoretically, there are several ways to avoid burdensome update; but most of them are impractical, such as (i) no revision of HS (systemic issue), (ii) value-added rule only instead of tariff-shift rule (substantive issue), or (iii) edition of HS being unspecified in the PSRs (legal drafting issue).
- Another hypothetical way to bind the use of “current and same edition of HS for classification and origin determination”, suggested for consideration.
- Updated PSRs are better than ambiguous ones, but if it appears overly complex, the updated rules are no longer user-friendly. Therefore, in the long run, renegotiation of the PSR may be necessary.
- Expecting WCO to provide full details of HS changes and maintain its “Guide for Technical Update of Preferential Rules of Origin”.

Thank you for your attention!

