

## GLOBALLY UNIFORM HARMONIZED SYSTEM NOMENCLATURE? WAIVERS FOR DEVELOPING COUNTRIES AND MEMBERSHIP DEVELOPMENT: SITUATION 2017

Carsten WEERTH

*Federal Customs Service of Germany*

*FOM University of Applied Sciences in Economics and Management, Germany*

E-mail: carsten.weerth@gmx.de

### *Abstract*

*The Harmonized Commodity Description and Coding System (HS) is the most successful legally binding instrument of the World Customs Organization (WCO) with 156 contracting parties. More and more countries and economic regions are applying the HS nomenclature worldwide. But not all member states are applying the same version of the HS nomenclature. Developing countries are allowed to use another (earlier) version of the nomenclature according to article 4 HS, however the WCO does not define the term “developing countries”.*

*In the main section this paper discusses the term “developing countries” and examines the nomenclature application by HS member states and non-member states. It displays data from 2008 and 2017 on the position of HS parties regarding the version of the nomenclature they apply and explains that not only developing nations are not applying the most actual HS 2017 nomenclature but also two advanced economies (Iceland and Singapore): 83 out of 156 contracting parties have successfully implemented the HS 2017 and 56 HS member states are still using older HS versions. Four contracting parties are planning to implement the HS 2017 in 2018 and one in 2019. 46 HS applicants are so called non-members and not HS member states in 2017. Three non-members are advanced economies (all three are WTO members): Hong Kong, Macao and Liechtenstein.*

*The membership development of the HS is examined and future accessions are forecasted.*

*This paper is researched by help of the WCO publications on the HS, the legal texts of the HS and the position of parties for the HS, the WCO publications for the signature and ratification of the Harmonised System Convention and by help of WTO publications on their membership and observers.*

*The methods used during the study are analysis, synthesis, comparison, generalization, systematic and functional analysis.*

*Keywords: Harmonized System, developing countries, legislation, capacity building, economic integration, trade facilitation .*

### **Introduction**

The Harmonized Commodity Description and Coding System (Harmonized System Convention, Brussels 14 June 1983; in short Harmonized System or HS) for the customs classification of goods into the tariff scheme of the HS nomenclature has resulted in the worldwide annealing of tariff nomenclatures since its first usage in 1988. It is in use in more than 200 countries and economic regions<sup>1</sup> (however only 156 countries are contracting

<sup>1</sup> WCO, 2017a

parties)<sup>2</sup> and more than 98 % of all trans-border trade is statistically and economically classified by help of the HS nomenclature.<sup>3</sup> The customs classification of goods is complex and depending on numerous rules, in particular on the terms of 1,222 HS-headings (however further 37 HS-headings are not in use),<sup>4</sup> and 386 notes according to General Rule (GR 1) and on the terms of 5,387 HS-subheadings and 9,528 subheadings and 63 subheading-notes (within the EU)<sup>5</sup> according to GR 6.<sup>6</sup>

The WCO has published new background information on the usage of the nomenclature in the contracting parties of the HS<sup>7</sup> which sheds new light on the issue of the application of the HS nomenclature in the developing countries.

Therefore this paper examines the application of the HS nomenclature 2017 in the world, in particular in developing countries and also the membership development of the HS.

## 1. Globally Uniform HS Nomenclature?

The HS nomenclature has resulted in the annealing of the worldwide used nomenclatures for statistical and customs classifications. The genesis and aims of the HS-Nomenclature are very well researched and documented.<sup>8</sup> The same applies to the six revisions of the nomenclature (HS 1996-HS 2017): The HS nomenclature (HS 1988) has been revised in 1992 (HS 1992), 1996 (HS 1996<sup>9</sup>), 2002 (HS 2002<sup>10</sup>), 2007 (HS 2007<sup>11</sup>), 2012 (HS 2012<sup>12</sup>) and 2017 (HS 2017<sup>13</sup>) and thereby certain headings have been cancelled which are not in use any more.

However the actual application of the HS nomenclature and its problems have rarely been subject of systematic research (and if so than mostly within the EC/EU).<sup>14</sup> The common assumption has been that the application of the HS nomenclature is uniform in all contracting parties (every five years new revised versions are published and in application, news gaps are occurring in all tariffs, the headings and notes are containing the same commodities, etc.).<sup>15</sup>

The publication of the WCO background paper enables research about topics which were not possible to examine before. Are all developing countries applying the nomenclature

<sup>2</sup> Weerth 2016 in Bungenberg/Herrmann/Krajewski/Terhechte, *EYIEL* 7, Chapter 34, pp. 787–799, updated with data from the WCO, WCO, 2017d

<sup>3</sup> Wind 2007, 2 *GTCJ* 2, p. 82

<sup>4</sup> Weerth 2017, *HS 2007-HS 2017: Notes of the Tariff Nomenclature and the Additional Notes of the EU revisited*, 11 *WCJ* 1 (2017), pp. 49–68.

<sup>5</sup> Weerth, *HS 2007-HS 2017: Notes of the Tariff Nomenclature and the Additional Notes of the EU revisited*, 11 *WCJ* 1 (2017), pp. 49–68.

<sup>6</sup> Weerth 2008, *Basic Principles of Customs Classifications under the Harmonized System*, 2 *GTCJ* 2 (2008), pp. 61–67

<sup>7</sup> WCO, 2017c

<sup>8</sup> Müller, *ZfZ* 1975, pp. 73–75, Anon., *ZfZ* 1987, pp. 235–238 and Cludius, *ZfZ* 1987, pp. 298–303

<sup>9</sup> Czakert, 1995 and Czakert, *AW-Prax* 1995, pp. 422–424

<sup>10</sup> Weerth 2001, *AW-Prax* 2011, pp. 373–376

<sup>11</sup> Weerth 2006, *AW-Prax* 2006, pp. 499–503

<sup>12</sup> Weerth 2011, *AW-Prax* 2011, pp. 307–311

<sup>13</sup> Weerth 2016, *AW-Prax* 2016, pp. 399–404

<sup>14</sup> Bär 1977, *Einfach und einheitlich tarifieren – aber wie?*, *ddZ-Fachteil*, pp. F54–F59 and F71–F74, Vander, Schueren 1991, “Customs Classification: One of the Cornerstones of the Single European Market, but one which cannot be Exhaustively Regulated”, *Common Market Law Review*, pp. 855–875, Vermulst 1994, “EC Customs Classification: Should Ice Cream melt?”, 15 *Michigan Journal of International Law* 4, pp. 1242–1327, Vander, Schueren 1997, “Tariff Classification: An Instrument for EC Trade Policy”, 2 *European Foreign Affairs Review* 2, pp. 255–275 and Weerth 2007, *Einheitliche Anwendung des Gemeinsamen Zolltarifs beim Zugang zum Europäischen Binnenmarkt?* (Dissertation, Universität Oldenburg), Uniform application of the Common Customs Tariff at market entry to the EC-Common Market? (PhD-Thesis, Carl von Ossietzky University Oldenburg), Sierke Verlag, Göttingen, in particular

<sup>15</sup> Weerth, 3 *GTCJ* 2008a–2008g

as well as industrial countries? A first examination was possible in 2008 (application of the HS 2007).<sup>16</sup> This is the second scientific exploration on this matter which researches the global application of the HS 2017 and the earlier versions by developing countries and other states.

## **2. Application of older HS Nomenclature Versions in Developing Countries**

In general all HS contracting parties have agreed to apply the nomenclature of the HS (Article 2 HS, the whole nomenclature is attached as annex to the HS) according to article 3 HS – the first six digits cannot be altered and must be applied in the national customs tariffs. Article 4 HS contains waivers for developing countries. But what are developing countries?

The term “developing country“ is not defined within the HS or by the WCO. That is an interesting point: how can a legal agreement (here: the HS) make waivers for developing countries but not define which countries are covered by that definition? The WCO is stating that three-quarters of its members are developing countries<sup>17</sup> but never defines that term in any agreement.

Therefore the list of WTO member states which understand themselves as “developing countries“ should be applicable (about two thirds of the WTO Membership of 164 contracting states have themselves termed as “developing countries”).<sup>18</sup>

On the United Nation’s list of the least-developed countries (LDC)<sup>19</sup> there are 48 countries, of which 36 are also WTO members.<sup>20</sup> Another definition from the International Monetary Fund (IMF) simply distinguishes between “advanced economies” (developed countries) and “emerging and developing countries”.<sup>21</sup> The definitions and lists from the UN and the IMF will be used in this paper.

The waiver of article 4 HS reads as follows:

“ARTICLE 4 HS

Partial application by developing countries

1. Any developing country Contracting Party may delay its application of some or all of the subheadings of the Harmonized System for such period as may be necessary, having regard to its pattern of international trade or its administrative resources.

2. A developing country Contracting Party which elects to apply the Harmonized System partially under the provisions of this Article agrees to make its best efforts towards the application of the full six-digit Harmonized System within five years of the date on which this Convention enters into force in respect of it or within such further period as it may consider necessary having regard to the provisions of paragraph 1 of this Article.

3. A developing country Contracting Party which elects to apply the Harmonized System partially under the provisions of this Article shall apply all or none of the two-dash subheadings of any one one-dash subheading or all or none of the one-dash subheadings of any one heading. In such cases of partial application, the sixth digit or the fifth and sixth digits of that part of the Harmonized System code not applied shall be replaced by "0" or "00" respectively.

4. A developing country which elects to apply the Harmonized System partially under the provisions of this Article shall on becoming a Contracting Party notify the Secretary General of those subheadings which it will not apply on the date when this

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<sup>16</sup> Weerth, 2008g

<sup>17</sup> WCO, 2017e

<sup>18</sup> WTO, 2017a, [http://www.wto.org/english/tratop\\_e/devel\\_e/d1who\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/d1who_e.htm) and WTO, 2017b, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/dev1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm).

<sup>19</sup> UN, 2016, [http://www.un.org/en/development/desa/policy/cdp/ldc/ldc\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf).

<sup>20</sup> WTO, 2017c, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org7_e.htm).

<sup>21</sup> IMF, 2008, <http://www.imf.org/external/pubs/ft/weo/2008/01/weodata/groups.htm#oem>.

Convention enters into force in respect of it and shall also notify the Secretary General of those subheadings which it applies thereafter.

5. Any developing country which elects to apply the Harmonized System partially under the provisions of this Article may on becoming a Contracting Party notify the Secretary General that it formally undertakes to apply the full six-digit Harmonized System within three years of the date when this Convention enters into force in respect of it.

6. Any developing country Contracting Party which partially applies the Harmonized System under the provisions of this Article shall be relieved from its obligations under Article 3 in relation to the subheadings not applied.”

However article 5 HS contains special provisions which entitle developing countries to ask for technical assistance.

“ARTICLE 5

Technical assistance for developing countries

Developed country Contracting Parties shall furnish to developing countries that so request, technical assistance on mutually agreed terms in respect of, inter alia, training of personnel, transposing their existing nomenclatures to the Harmonized System and advice on keeping their systems so transposed up-to-date with amendments to the Harmonized System or on applying the provisions of this Convention.”

### **2.1. Application of the HS 2007 – Data from 2008**

The WCO background paper as of February 2008<sup>22</sup> showed for the first time the application of the nomenclature in each of the then 133 contracting parties and in particular which version of the nomenclature was being applied.<sup>23</sup>

Of the 133 HS contracting parties (as of 2008) not all were applying the version of the HS 2007 – this result is unexpected since the WCO has always pointed out that there is an uniform application of the HS nomenclature and on the other hand this topic has not been subject to research since no data was available prior to the publication of this first background paper of the WCO in 2008.

In Table 1 all HS contracting parties are shown, that were in 2008 not applying the nomenclature in the version as of 2007 (HS 2007) but used older versions.

This list contained 12 least-developed countries according to UN-definition.

Since then the WCO has published a position of parties about the HS application on a yearly basis which is a very positive input for regular research in WCO matters.

### **2.2. Application of the HS 2017 – Data from 2017**

The situation in 2017 has changed dramatically. The HS has already 156 contracting parties and it still is the most successful legally binding instrument of the WCO.<sup>24</sup> A recent dataset on the application of the HS nomenclature has resulted in 56 member states which are not applying the 2017 version of the HS nomenclature (Table 2).

One of the most interesting results of this WCO-dataset from March 2017<sup>25</sup> is that only 118 out of more than 150 HS contracting parties have introduced the HS 2012. Until March 2017 only 83 out of 156 HS contracting parties had introduced the HS 2017.

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<sup>22</sup> WCO, 2008

<sup>23</sup> Weerth, 2008g

<sup>24</sup> Weerth 2016 in Bungenberg/Herrmann/Krajewski/Terhechte, *EYIEL* 7, Chapter 34, pp. 787-799, updated with data from the WCO, WCO, 2017d.

WCO 2017, *Position of Contracting Parties to the Harmonized System Convention and Non-Contracting*

<sup>25</sup> *Party Administrations*, <http://www.wcoomd.org/en/topics/nomenclature/overview/position-of-contracting-parties-to-the-hs-and-non-contracting-party-administrations.aspx> and [http://www.wcoomd.org/~media/wco/public/global/pdf/topics/nomenclature/overview/hs-contracting-parties/positions-of-cp/situation\\_hs.pdf?la=en](http://www.wcoomd.org/~media/wco/public/global/pdf/topics/nomenclature/overview/hs-contracting-parties/positions-of-cp/situation_hs.pdf?la=en) (1.5.2017)

**Table 1**

**HS-contracting parties in 2008 with older versions of the HS nomenclature (HS 1992 – HS 2002)**

No.	HS Contracting Party	HS Nomenclature	No.	HS Contracting Party	HS Nomenclature
1	Bangladesh	HS 2002	18	Mauritania	HS 2002
2	Benin	HS 2002	19	Moldova	HS 2002
3	Cambodia	HS 2002	20	Nigeria	HS 2002
4	Cameroon	HS 2002	21	Panama	HS 2002
5	Chad	HS 1992	22	Peru	HS 2002
6	Columbia	HS 2002	23	Philippines	HS 2002
7	Congo, Democr. Republic	HS 2002	24	Qatar	HS 2002
8	Eritrea	HS 2002 (?)	25	Swaziland	HS 2002
9	Ethiopia	HS 2002	26	Ukraine	HS 2002
10	Gabon	HS 2002	27	United Arab Emirates	HS 2002
11	Guinea	HS 2002	28	Uzbekistan	HS 2002
12	Haiti	HS 1996	29	Venezuela	HS 2002
13	Iran	HS 2002	30	Yemen	HS 1996 (?)
14	Kenya	HS 2002	31	Tajikistan	-
15	Libya	HS 2002	32	Tanzania	-
16	Maldives	HS 2002	33	Syria	-
17	Mali	HS 2002			

In contrast to the overall situation ten years ago (Table 1) the number of contracting parties has changed which have not changed to the new actual HS nomenclature version (HS 2017) from 30 to 56. Four contracting parties have announced the application from 2018, one from 2019.

In Europe five contracting parties did not apply the HS from 2017: Albania, Georgia, Iceland, Moldova and Ukraine.

Two advanced economies have not introduced the HS 2017 according to the overall introduction scheme: Iceland and Singapore. Both states clearly are not included in the waiver for developing countries as of article 4 HS.

Another interesting result is that rich Gulf States in 2017 are still applying outdated HS nomenclatures: Kuwait and UAE (HS 2007) and also Qatar (HS 2012).

The expected result is that 21 of the Least Developed Countries (LDCs) have not introduced the HS 2017 yet and that further 33 Developing Countries (DC) have not introduced the HS 2017 in the normal time schedule.

The WCO is nowadays also publishing data on the HS application by non-contracting states (Table 3).



**HS-contracting parties in 2017 with older versions of the of the HS nomenclature (HS 2002 – HS 2012); Advanced Economies (AE) and Developing Countries (DC) according to the IMF and the Least Developed Nations according to the UN**

No.	HS Contracting Party	HS Nomenclature	AE	DC	LDC
1	Albania	HS 2012		X	
2	Bahamas	HS 2007		X	
3	Bangladesh	HS 2012			X
4	Benin	HS 2007		X	
5	Botswana	HS 2012		X	
6	Brunei	HS 2012		X	
7	Burundi	HS 2017 starting 2019		X	
8	Cameroon	HS 2012		X	
9	Central African. Rep.	HS 2007			X
10	Chad	HS 2007			X
11	Congo, Democr. Rep.	HS 2017 starting 2018			X
12	Congo, Republic	HS 2012		X	
13	Cote D'Ivoire	HS 2007		X	
14	Cuba	HS 2012		X	
15	Djibouti	HS 2012			X
16	Ecuador	HS 2012		X	
17	Egypt	HS 2012		X	
18	Eritrea	HS 2002			X
19	Ethiopia	HS 2012			X
20	Gabun	HS 2007		X	
21	Georgia	HS 2012		X	
22	Guatemala	HS 2012		X	
23	Guinea Bissau	HS 2012			X
24	Haiti	HS 2007			X
25	Iceland	HS 2007	X		
26	Kenya	HS 2012		X	
27	Kuwait	HS 2007		X	
28	Lesotho	HS 2012			X
29	Libya	HS 2012		X	
30	Madagaskar	HS 2012			X
31	Malawi	HS 2017 starting 2018			X
32	Malaysia	HS 2012		X	
33	Mali	HS 2007			X
34	Mauretania	HS 2002			X
35	Moldava	HS 2017 starting 2018		X	
36	Mosambique	HS 2012			X
37	Myanmar	HS 2012			X
38	Namibia	HS 2007		X	
39	Niger	HS 2007			X
40	Nigeria	HS 2007		X	
41	Papua Neuguinea	HS 2007		X	
42	Philippines	HS 2012		X	
43	Qatar	HS 2012		X	
44	Sao Tomé and Príncipe	HS 2012			X
45	Senegal	HS 2012			X

No.	HS Contracting Party	HS Nomenclature	AE	DC	LDC
46	Singapore	HS 2012	X		
47	Swasiland	HS 2012		X	
48	Syria	HS 2012		X	
49	Tajikistan	HS 2007		X	
50	Tanzania	HS 2012			X
51	Uganda	HS 2012		X	
52	Ukraine	HS 2017 starting 2018		X	
53	United Arab Emirates	HS 2007		X	
54	Usbekistan	HS 2012		X	
55	Viet Nam	HS 2017 starting 2018		X	
56	Yemen	HS 2012			X

**Table 3**

**Overview of the HS application 2017 by parties which are not HS contracting parties and which are applying older HS versions (HS 2007 – HS 2012)**

No.	HS Contracting Party	HS Nomenclature	AE	DC	LDC
1	Afghanistan*	HS 2007			X
2	Antigua and Barbuda*	?		X	
3	Barbados*	?		X	
4	Belize*	?		X	
5	Bermuda	HS 2017		X	
6	Cook Islands	?		X	
7	Curaçao	HS 2017		X	
8	Dominica*	?		X	
9	El Salvador*	HS 2017		X	
10	Equatorial Guinea**	?			X
11	Gambia*	?			X
12	Grenada*	?		X	
13	Guayana*	HS 2007		X	
14	Honduras*	?		X	
15	Hong Kong, China*	HS 2017	X		
16	Iraq**	?		X	
17	Jamaica*	?		X	
18	Kiribati	?			X
19	Laos*	?			X
20	Liechtenstein*	HS 2007	X#		
21	Macao, China*	HS 2017	X#		
22	Marshall Islands	?		X	
23	Micronesia	?		X	

No.	HS Contracting Party	HS Nomenclature	AE	DC	LDC
24	New Caledonia	HS 2007		X	
25	Nicaragua*	?		X	
26	Niue	?		X	
27	Palau	?		X	
28	Palestine	HS 2017		X	
29	Polynesia	?		X	
30	Samoa*	HS 2007		X	
31	Seychelles*	?		X	
32	Solomon Islands*	?			X
33	Somalia**	?			X
34	South Sudan	?			X
35	St. Kitts and Nevis*	?		X	
36	St. Lucia*	?		X	
37	St. Pierre and Miquelon	?		X	
38	St. Vincent and the Grenadines*	?		X	
39	Suriname*	?		X	
40	Timor-Leste**	?			X
41	Tonga*	HS 2012		X	
42	Trinidad and Tobago*	HS 2007		X	
43	Turkmenistan	?		X	
44	Tuvalu	?			X
45	Vanuatu*	HS 2017			X
46	Wallis and Futuna Islands	?		X	
47	Andean Community	?			
48	Caribbean Community (CARICOM)	?			
49	Common Market for Eastern and Southern Africa (COMESA)	?			
50	Commonwealth of the Independent States (CIS)	?			
51	Economic and Monetary Community of Central Africa (CEMAC)	?			
52	Economic Community of Western African States (ECOWACS)	?			
53	Gulf Co-Operation Council (GCC)	?			
54	Latin American Integration Association (LAIA)	?			
55	Southern Cone Common Market (MERCOSUR)	?			
56	West African Economic and Monetary Union (UEMOA)	?			

*WTO member states are indicated by help of a \*, WTO-Observers with \*\*; Advanced Economies (AE) and Developing Countries (DC) according to the IMF and the Least Developed Nations according to the UN; # updated with data from en.wikipedia.org*

46 states and ten economic communities, economic and monetary communities or customs unions are applying the HS nomenclature without being actual member states or members of the HS (so called non-members). However only for 14 out of 46 states the



nomenclature version is known which is currently in use: six non-members are still applying the HS 2007, one non-member is applying the HS 2012 and seven non-members have already introduced the HS 2017. In 32 cases the HS version which is used by the non-member is not known to the WCO.

11 of the non-members are belonging in the group of the LDCs and 32 are developing countries. It is very amazing that in this list of non-members three countries are listed which must be regarded as advanced economies (all three are WTO members): Hong Kong, Macao and Liechtenstein.

A further interesting result is that out of 46 states which are non-members which are applying the HS nomenclature 26 are WTO Member states that have to apply the most favored nation (MFN) tariff rates which were negotiated on the base of the HS nomenclature. Further four non-members are WTO observers.

### **2.3. HS Membership Development 2014 – 2019**

#### **2.3.1. HS-Application From 2014**

The HS nomenclature is being applied by a growing number of new countries which makes the overall membership to the HS 156 countries.<sup>26</sup>

The HS nomenclature is being applied by five new countries since January 2014:<sup>27</sup>

- Albania;
- Bosnia and Herzegovina;
- Costa Rica;
- Mozambique;
- Papua New Guinea.

However two further countries were applying the HS nomenclature since the year of 2014:

- Brunei Darussalam (28-06-2014);
- Guatemala (18-09-2014).

The WCO has verified these data<sup>28</sup> and in the last two cases only respectively. All new contracting parties of the HS have agreed to apply the HS-headings (4-digit-code) and HS-subheadings (6-digit-code) within their customs tariff schemes.

#### **2.3.2. HS-Application From 2015**

Three new contracting parties of the HS have agreed to apply the HS nomenclature from January 2015:<sup>29</sup>

- Comoros;
- Guinea Bissau;
- Sao Tomé and Príncipe.

No further new countries were applying the HS from 2016.

#### **2.3.3. HS-Application From 2017**

Two new contracting parties of the HS have agreed to apply the HS nomenclature from January 2017:<sup>30</sup>

- Djibouti;
- Sierra Leone.

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<sup>26</sup> Weerth 2011, 6 *GTCJ 9 2011*, p. 455, Weerth 2012, 7 *GTCJ (2012) 11/12*, p. 510, Weerth 2014, 9 *GTCJ 9 (2014)*, pp. 440-442 and WCO 2017a

<sup>27</sup> WCO 2017a and WCO 2017b

<sup>28</sup> WCO 2017a, WCO 2017b and Weerth 2014, 9 *GTCJ 9 (2014)*, pp. 440-442

<sup>29</sup> WCO 2017a, WCO 2017b, Wind 2007, 2 *GTCJ 2 (2007)*, pp. 79-86, Weerth 2008, 3 *GTCJ 2 (2008)*, pp. 61-67 and Weerth 2014, 9 *GTCJ 9 (2014)*, pp. 440-442

<sup>30</sup> WCO 2017a, WCO 2017c, WCO 2017d and Weerth 2014, 9 *GTCJ 9 (2014)*, pp. 440-442.

However these parties may apply the HS nomenclature from an earlier date.

#### **2.3.4. HS-Application From 2018**

Two new contracting parties of the HS have agreed to apply the HS nomenclature from January 2018:<sup>31</sup>

- Oman;
- Palestine.

However these parties may apply the HS nomenclature from an earlier date.

#### **2.3.5. HS-Application From 2019**

One new contracting party of the HS has agreed to apply the HS nomenclature from January 2019:<sup>32</sup>

- Burundi.

However this party may apply the HS nomenclature from an earlier date.

#### **2.3.6. HS-Application All in All**

The HS nomenclature is being applied by 156 contracting parties<sup>33</sup> and more than 200 countries, customs and economic unions worldwide (exactly 207) apply the nomenclature for their customs tariff schedules.<sup>34</sup>

That means that over 98 percent of the merchandise in international trade is classified in terms of the HS.<sup>35</sup>

### **3. Possible Membership Growth**

The HS Convention is still growing at a high velocity and there are still about 50 countries which are applying the HS nomenclature but are not contracting parties to the HS (table 3). Therefore there still is considerable possibility of future accessions (in particular of 26 non-members which are WTO members (see table 3).

Table 4 documents the high velocity of the HS membership growth since 2011.

**Table 4**

**HS membership growth since 2011<sup>36</sup>**

Year	New members	Membership (absolute)
2011	3	141
2012	4	145
2013	4	149
2014	2	151
2015	2	153
2016	1	154
2017	2	156

<sup>31</sup> WCO 2017a, WCO 2017c and WCO 2017d

<sup>32</sup> WCO 2017a, WCO 2017c and WCO 2017d

<sup>33</sup> WCO 2017a and WCO, 2017b

<sup>34</sup> WCO 2017b, Wind 2007, 2 *GTCJ 2 (2007)*, pp. 79 - 86 and Weerth 2008, 3 *GTCJ 2 (2008)*, pp. 61-67.

<sup>35</sup> WCO 2017b

<sup>36</sup> Weerth 2016 in Bungenberg/Herrmann/Krajewski/Terhechte, *EYIEL 7*, Chapter 34, pp. 787-799, updated with data from the WCO, WCO, 2017d.

## **Summary and concluding remarks**

The HS Convention is the most successful legally binding instrument of the WCO. 156 contracting parties are applying the HS nomenclature. The HS membership is still growing and new countries are applying the HS from 2017, 2018 and 2019. Since 2011 the HS membership has risen from 138 to 156. However not all applying countries are necessarily HS members: 46 HS applicants are so called non-members and not member states in 2017. Further 10 customs unions and economic and monetary unions are applying the HS in 2017.

However the HS nomenclature is not uniform worldwide although the WCO publications suggest this state of uniform legislation (HS version of 2017). The HS 2007 has only been implemented by 99 HS contracting states out of 133. In 2008 30 HS member states still used older versions of the HS nomenclature, three further contracting parties did not verify the application in February 2008 and one contracting party was planning the application from 2009.

In 2017 the picture has changed dramatically: 83 out of 156 contracting parties have successfully implemented the HS 2017. 56 HS member states are still using older HS versions. Four contracting parties are planning to implement the HS 2017 in 2018 and one in 2019.<sup>37</sup>

Developing countries are allowed to use older HS versions (so called waivers) according to article 4 HS for a period of grace of five years. The WCO does not define the term “developing countries” which is sadly an omission of the WCO. Therefore the definition of the IMF and the LDC definition of the UN are applied in this paper. Many contracting countries are utilizing this article 4 HS and are using earlier versions of the HS nomenclature (HS 2012 or HS 2007) some of which are clearly no developing countries but advanced economies (in 2017: Iceland and Singapore).

Since 2008 the WCO is regularly and yearly publishing the position of parties about the application of the HS which enables research in matters previously disclosed from and out of reach for public research. The inner life of the WCO contracting parties and the WCO legal instruments (and the practical application problems) is open to the interested public since then.

Now the WCO is also publishing data on the application of the HS by non-members: 46 non-members are applying the HS nomenclature out of which 26 WTO member states and further four are WTO observers. This result is interesting since the 26 WTO member states are forced to apply the obligations which have been negotiated on the base of the HS nomenclature.

Three non-members are advanced economies (all three are WTO members): Hong Kong, Macao and Liechtenstein.

There still is a considerable growth potential for the HS membership since these advanced economies and the WTO member states/observers are interested parties and should therefore join the HS. Thereby they could contribute as active actors and not be only mere onlookers on the legal issues of the HS development and application.

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<sup>37</sup> These numbers do not sum up to 156 HS contracting parties, e. g. because the EU is a contracting party, however 28 member states are also individual contracting parties and some recently acceded parties are not using the HS nomenclature yet.

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