QUARTERLY NEWSLETTER

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LIVINGSTON
Simplify Trade

TAKE A POSITIVE APPROACH

Just as we promised with our inaugural launch of Global Trade News, we continue to endeavor to provide insight into the global trade environment, and to offer solutions that simplify the complexities of trade to help you SUCCEED!

The global trade environment is complex. However, we're here to provide our expertise to help you navigate the myriad of regulatory changes. And, with regulatory change there also come opportunities. I am a firm believer that challenges often encourage companies to "think outside of the box" and turn those challenges into opportunities. I see this first-hand on a regular basis. As Livingston's global footprint continues to grow, we too are constantly adapting to the changing landscape of trade.

And you? Are you ready to take on the global trade arena and all of the opportunities it has to offer?

As we enter the last quarter of 2016 and the holiday season, we wish you continued success – both at home, and abroad.

Candace Sider, Vice President, Regulatory Affairs Canada
Travis Hull, Director, U.S. Regulatory Affairs
Susan Pomerantz, Senior Director, Global Governance and Compliance

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BREXIT = UNCERTAINTY

*By **Phil Sutter**, GTM Governance, Global*

The Brexit Referendum vote in the United Kingdom (UK), on June 23, 2016, has produced much uncertainty about Britain's future. The referendum was an expression of the will of the people for Britain to exit the European Union (EU), a bloc of 28 countries. However, apart from the finality of the vote, many different scenarios are possible over the next several years.

Brexit did result in the changing of the guard from Prime Minister David Cameron to new Prime Minister Theresa May. Cameron opposed Brexit, and took a political gamble to offer the vote. He resigned shortly thereafter and left May, a fellow Conservative, to execute the details of Brexit[1].

Prime Minister May has quite a task ahead of her. Her first step in the process was to announce that legislation on the exit of the UK in the EU Parliament will be tabled by the end of March 2017. This legislation will detail the nature and timing of the UK's invocation of Article 50[1], which outlines the protocols for exiting the EU[2]. Remaining to be decided is how the UK will transition and move forward from its position as one of the leading EU countries.

David Davies, appointed head of the Department for Exiting the EU, hopes to make it a public process; but he says nothing will be revealed until they are ready to invoke Article 50[3]. Several approaches have been under consideration that take into account existing relationship scenarios with the EU[4], although both the "Norway" and "Switzerland" models have been rejected, as they both mean accepting the free movement of EU citizens – one of the key triggers for Brexit.

The "Turkey Model" requires that the UK engage in a customs union with the EU. This provides free tariffs on all industrial and processed goods, but not on raw materials. The union offers no agreement on services. There is no free movement of people and no budget contribution. A difference for the UK adopting such a model is that Turkey is seeking EU membership, while the UK would not.

The "Canada Model" would have the UK reach a free trade agreement with the EU similar to the yet-to-be-ratified Comprehensive Economic Trade Agreement (CETA) between Canada and the EU. CETA provides free duties on industrial goods but has quotas for sensitive industries. It provides for some flexibility on services. There is no agreement on the movement of people or budget contributions. The downside is that CETA negotiations began seven years ago, and as of this writing ratification has not occurred.

Finally, the fallback position is simply using the UK's standing as one of 164 members of the World Trade Organization (WTO). The UK would receive most favored nation status and pay duties and interact with the EU at arm's-length. With this option (and the various models or potential combinations), there are many details to consider.

To further complicate matters, the UK must try to hold its own kingdom together[5]. Within the UK; Ireland, Scotland, and Gibraltar individually voted to remain. They may each seek their independence or a compromise with the UK to retain EU membership. Also, the UK must convince corporations to stay the course. For example, London enjoys its status as a financial capital. Brexit may cause some companies to rethink their London residency.[6]

It is in the UK's interest to initiate a decisive and well-thought plan. Uncertainty is never good for business or government. Can it work out for the best? History tells us that the UK has centuries of prior experience operating on its own. So, as Britain told its people in 1939 at the outset of war; "Keep calm and carry on".

1. http://www.reuters.com/article/us-britain-eu-cameron-legacy-idUSKCN0ZT1Z9
2. http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577971/EPRS_BRI(2016)577971_EN.pdf
3. http://www.reuters.com/article/us-britain-eu-davis-idUSKCN11I1UY
4. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504604/Alternatives_to_membership_-_possible_models_for_the_UK_outside_the_EU.pdf
5. http://www.newsweek.com/how-scotland-and-n-ireland-could-retain-eu-membership-474931
6. http://www.telegraph.co.uk/business/2016/08/31/london-will-remain-the-top-financial-centre-post-brexit-says-deu/

CANADA'S WASSENAAR IMPLEMENTATION DELAY CAUSING ADMINISTRATIVE BURDEN TO CANADIAN EXPORTERS

*By **Brad Lehigh**, GTM Governance, Canada*

The Wassenaar Arrangement (WA) is made up of 41 countries committed to promoting responsibility and transparency in global arms trade and to preventing the destabilizing accumulations of arms. Each year, in December, WA signatories meet to discuss necessary revisions to the WA list of Dual-Use Goods and Technologies. The Wassenaar List is used by member countries as a basis for implementing controls on dual-use goods and technologies.

In theory, because all member states have agreed to a common language in regard to their respective Control Lists for Dual-Use Goods, there should be harmonization across Wassenaar nations as to what is "controlled" and what is not. As each Wassenaar nation must integrate the list into their own regulations, the timing can vary. And with some WA countries updating their regulations sooner than others, the result is that country lists do not align with each other.

In a previous **Global Perspectives publication**, we wrote about how the United States had adopted the 2014 Wassenaar Control List on May 21st, 2015. Since then, on September 20th, 2016, the United States has implemented the 2015 Wassenaar Control List as well. While the United States usually implements their list sooner than Canada, it seems this time Canada is taking an unusually long period of time to implement the list themselves. With the United States now having different and in many cases, more relaxed, export controls than Canada, there is an administrative burden for Canadian exporters who have to apply for export permits (licenses) for products that do not require a license to export from the United States.

Canada's unhurried implementation is causing harm to exporters in that Canadian companies must apply for, and wait to be issued, an export permit for goods which would not require such an undertaking had they been exported from the United States. For example, Information Security products that use encryption for Operations, Maintenance and Administration (OAM) purposes only, do not require a license to export from the United States, whereas a permit is required for export from Canada.

Canada's Export Controls Division has at least informed exporters that when applying for an export permit, if it is indicated to the government that the product would not be controlled under the new Wassenaar Control List, their permit application will be expedited and issued sooner than a more heavily controlled product. While this is a welcome and helpful gesture, much of the administrative pain is felt from actually having to prepare and submit an export permit application, rather than just waiting for it to be issued. The delay in implementing the Control List can only be seen as a trade barrier for Canadian exporters.

The 2015 change in Canada's Federal Government, and subsequent revamp of many departmental agencies – one of which saw the Department of Foreign Affairs, Trade, and Development (DFATD) restructured and renamed Global Affairs Canada (GAC) – may be partially to blame for the delay in implementing the Wassenaar Arrangement's Control Lists. Canada should seek to ensure these lists are introduced as soon as possible, and end delays caused by not issuing the changes in a timely manner.

TRANS-PACIFIC PARTNERSHIP AGREEMENT
COUNTRY FOCUS: PERU

Home to 31.75 million people, the Republic of Peru is located on the Western side of South America, and shares a border with five of its neighbours (Ecuador, Brazil, Columbia, Bolivia, and Chile). Peru is one of the fastest growing economies in the world, in industries such as copper, gold, zinc, petroleum, and coffee.

Geographically, Peru has a diversity of climates due to its many mountain ranges, tropical jungles, and coastal regions. The best time to travel there is winter, the dry season, lasting from May to September. Conversely, from December to March is summer – the wet season – which can have extreme temperature variations. The wet season is the main holiday period for Peruvians.

Peru is five hours behind Greenwich Mean Time (GMT-5), and business hours are typically 9am to 6pm, with a two-hour lunch period.

In a business setting, greeting others with a handshake is expected and considered appropriate for both men and women. And, although over 40 other languages are recognized, Spanish is the main language for government, business, and education. While business travellers can get by using only English, it is generally only spoken in densely populated tourist areas and high-end hotels.

Peru has a democratic system of government, with the president acting as the head of state. The current president, Pedro Pablo Kuczynski, has not held the position long. Having narrowly won the job in Peru's April 2016 election, he was sworn into office on July 28th, 2016.

Peru is a member of the World Trade Organization (WTO) and currently has over 20 free trade agreements and economic partnership agreements in place or under negotiation, including existing agreements with other TPP signatories such as Canada, U.S., Chile, Singapore, and Mexico. For more information about Peru's trade agreements, visit **www.acuerdoscomerciales.gob.pe**

U.S. ACE AND PGA CROSSOVER

*By **Patty Davis**, U.S. Regulatory Affairs*

Following years of planning, U.S. Customs and Border Protection's (CBP) transition to the Automated Commercial Environment (ACE) and the Single Window Initiative is nearing completion. With the exception of some, post-release processes, all electronic import and export filings are now being processed in ACE.

The submission of additional Partner Government Agency (PGA) information is at various stages of implementation. There are fifty PGAs that play a regulatory role in international trade, and fifteen of those agencies are currently positioned to participate in ACE and the Single Window Initiative. Legacy systems, such as the largely paper-based Automated Commercial System (ACS), for example, have been retired. In that system, the PGAs collected or issued over 200 forms, including licenses, permits and notices. Many of these forms are being replaced by a PGA message (data) set, and/or through CBP's Document Imaging System (DIS).

The Harmonized Tariff Schedule of the United States (HTSUS) features more than 20,000 tariff numbers. In ACE, as a means of alerting trade to their potential jurisdiction on a commodity within a tariff classification, most PGAs are placing agency-specific flags at the tariff number level. PGAs have claimed potential jurisdiction on a wide variety of products, collectively flagging over a third of all tariff numbers.

In addition, a third of the tariffs flagged by any given PGA, are also flagged by as many as five others – this is known known as "PGA Crossover".

Although flagging tariff numbers provides a convenient resource for determining which agency might have regulatory authority, it also requires that a determination and the required data or document images be provided when initiating the entry, prior to cargo arrival.

The PGA's jurisdictional authority is not being broadened due to ACE implementation. However, flagging tariff numbers will require an action from the customs broker on behalf of all PGAs that have flagged the tariff number. In some instances, the regulating PGA will be in an "either/or" situation: submit to one and disclaim the other. In other instances, where multiple agencies have flagged a tariff, the customs broker will be providing a message (data) set and/or imaging documents for multiple agencies.

Currently, four PGAs are fully functional and mandatory in the ACE environment: The National Highway Traffic and Safety Administration (NHTSA), Animal Plant Health Inspection Service (APHIS Lacey Act), the Food and Drug Administration (FDA), and National Marine Fisheries Service (NMFS) require a data message set and some DIS submissions. There is some crossover among these early participants. As an example, all tariffs flagged by NMFS are also flagged by FDA. As the filing for additional PGAs becomes mandatory, based on the aforementioned multiple agency flagging, crossover will become more evident – with actions required for each PGA that has flagged a particular tariff number.

TIME TO MAKE 2017 WCO HARMONIZED SYSTEM UPDATES

*By **Philip Sutter**, GTM Governance, Global*

Every five years, the World Customs Organization (WCO) updates the Harmonized System (HS). With the next one taking place on January 1st, 2017, it will soon be landing in the work queue of anyone maintaining a classification database.

The HS is a multipurpose international product nomenclature employed as a basis for countries to assess Customs tariffs, collect international trade statistics, administer preferential rules, track quotas, and so on.

The origins of the HS can be traced back to 1973 when the WCO authorized its development. The WCO study that launched the HS, examined a universal commodity code (created by the League of Nations between the world wars) and a common commodity nomenclature from the Customs Cooperation Council.

Representatives from 75 countries toiled for 15 years, meeting three or four times per year, until the HS finally came into force, in 1988. The drafters sought perfection, crafting the hierarchal document, from live animals in Chapter 1 to antiques in Chapter 97. They included known commodities, with provisions to cover those not explicitly described. Periodic updates would be a necessity.

Those of us who use the HS every day, might argue the perfection comment. Special interests, trade associations, and private sector lobbyists caused the plan to divert from total, statistical commonality among all countries to the creation of unique, statistical, country-tariff catalogues, using additional tariff code digits. The result was an industry unto itself that employs many customs professionals to interpret not only the HS, but the country tariff catalogues.

I once asked one of the original HS negotiators whether classification was intended to be difficult. He said, “No, but you should always remember that the detail in a nomenclature is usually there because someone, in government or industry, thinks it is necessary”. The details account for duty, statistics, trade agreements, origin, trade negotiations, quotas, anti-dumping, and national security. The 2017 HS changes encompass 234 sets of amendments relating to a wide range of products and product groups, including: fish and fishery products; forestry products, including tropical wood and certain bamboo and rattan products; antimalarial products; substances controlled under the Chemical Weapons Convention; hazardous chemicals controlled under the Rotterdam Convention; persistent organic pollutants controlled under the Stockholm Convention; ceramic tiles; newsprint; light-emitting diode lamps; monopods, bipods, and tripods; multi-component integrated circuits; and hybrid, plug-in hybrid, and all-electric vehicles.

It’s time to get ready. Begin by reviewing your product classification database. On January 1st, 2017 your product numbers will need to have the latest HS code and additional country statistical digits.

The WCO published a six-digit correlation table[1] showing the expiring classification and the one or more new classifications to be considered for that product. As the U.S. has done[2], each country will be publishing details to help you. Unfortunately, many countries will wait until very close to the deadline.

My recommendation is to start as soon as possible. With the WCO information, the analysis can at least be organized. Usually, the update analysis will require you to identify a new product attribute. This information may or may not be evident in the description or audit trail for the existing record. So, you may need to review material specifications, engineering drawings, product bills of material, or other information to make an accurate update. Work closely with your classification subject matter experts to ensure accuracy.

With that preparation, you can rest easy and look ahead to 2022, when the next round of HS updates will surely return to your work queue!

1. http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition.aspx
2. https://www.usitc.gov/tariff_affairs/documents/proposed_recommendations_to_amend_the_hts_inv._1205-11.pdf

THE WTO TRADE FACILITATION AGREEMENT

*By **John Moccia**, Regulatory Affairs, Canada*

Nearly three years have passed since the 159 member states of the World Trade Organization (WTO) reached consensus and signed the Trade Facilitation Agreement (TFA). The Agreement represents a significant milestone for the WTO as it is the first multilateral trade agreement to be concluded since the WTO was established, over 20 years ago.

The TFA will require member countries to adopt a host of measures aimed at streamlining their customs processes. The goal of the agreement is to modernize and simplify customs and border procedures in an effort to lower trade costs and boost trade, with most benefits accruing to developing countries.

As organizations around the world continually face many administrative barriers related to the complexities of import, export and transit formalities, minimizing the burden of these procedures has been a long-standing priority for the WTO. According to the WTO, the TFA has a huge potential to reduce trade costs, thereby boosting trade between countries and raising world income.

The TFA will enter into force once two-thirds of WTO members (i.e. 108 of 162 countries) have ratified it and deposited their instruments of acceptance. To date, 92 members have completed their national procedures and notified the WTO of their ratification. These countries include, Hong Kong, China, the United States, Japan, Australia and Mexico.

What is the status of the TFA in Canada?

Canada is working towards ratifying the TFA; however, it must first amend the following six statues: Food and Drugs Act, Hazardous Products Act, Radiation Emitting Devices Act, Canadian Environmental Protection Act, Pest Control Products Act and the Canada Consumer Products Safety Act. On April 13, 2016, Bill C-13 introduced amendments to the above statues, which address two specific provisions required by the TFA – Article 10.8.1 Rejected Goods and Article 11.8 Goods in Transit.

Article 10.8.1 requires WTO members to allow importers to return to exporters goods rejected on account of their failure to meet prescribed sanitary, phytosanitary, or technical regulations, unless an alternative way is provided for in the laws and regulations. The proposed statutory amendments identify criteria under which non-compliant goods could be returned, re-consigned or handled in other ways (i.e. seizure, detainment, forfeiture and/or disposal).

Article 11.8 prohibits the application of a WTO member's technical regulations to goods moving through its territory from a point outside its territory to another foreign point (i.e. goods in transit). Since certain Health Canada and Environment and Climate Change Canada statutes prohibit the transit of goods that do not comply with Canadian technical regulations, the proposed amendments would create the legal authority to allow the Government to exempt goods in transit through Canada from these technical regulations, thus helping to facilitate trade.

According to the WTO, by expediting and streamlining the movement of goods across borders, the TFA has the potential to reduce total trade costs – by more than 14% for low-income countries and more than 13% for upper middle-income countries. We have not seen such a multilateral agreement of this nature since the General Agreement on Tariffs and Trade (GATT). There is no doubt that trade facilitation remains a critical component for further reducing trade transactional costs on a global scale.

U.S. EXPORT CONTROL REFORMS FOR CLOUD COMPUTING

*By **Chris Brady**, GTM Governance, U.S.*

On June 3, 2016, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) and the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) published final rules revising key definitions in the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). These revisions are part of the ongoing U.S. export control reform efforts designed to harmonize both the language and structure of EAR and ITAR. Most of the changes are merely structural or semantic, introduced to enhance clarity and consistency between the two sets of regulations. However, changes within the EAR pertaining to the treatment of cloud computing include an export control reform that may benefit a great number of U.S. companies.

Traditionally, BIS had advised the transmission and storage of technology or software outside of the U.S., controlled under the EAR, constitutes an export or re-export. Therefore, such transmission or storage could potentially trigger a licensing requirement.

The BIS final rule, effective September 1, 2016, allows U.S. companies to use cloud technology and other electronic transmission systems to transfer and store unclassified technology and software subject to the EAR without facing export control licensing requirements – as long as the transfers and storage meet certain provisions specified within the rule. This is significant because it provides for technology or software that is encrypted in accordance with the specified criteria to not be considered an export, re-export, or transfer when the technology or software leaves one country for another. Thus, if the specified provisions are met, the final rule allows technology or software to be hosted outside the United States without obtaining an export or re-export license that could potentially be mandated under the EAR.

The final rule provides that transmitting or storing electronic data (Cloud storage) that meet certain security standards will no longer be considered an export of that data, provided that the technology or software is:

- Unclassified
- Secured using "end-to-end encryption"
- Secured using cryptographic modules (hardware or software) compliant with Federal Information Processing Standards Publication 140-2 (FIPS 140-2) or its successors, supplemented by software implementation, cryptographic key management, and other procedures and controls that are in accordance with guidance provided in current U.S. National Institute for Standards and Technology publications, or other equally or more effective cryptographic means
- Not intentionally stored in a military-embargoed country (Country Group D:5, per 15 CFR Supplement No. 1 to Part 740) or in the Russian Federation

Note: data in transit via the Internet is not deemed to be stored.

The final rule's definition of "end-to-end encryption" requires that:

- The technology or software will not be in unencrypted form while between the originator and recipient or these parties' respective "in-country security boundaries"
- The means of decryption will not be provided to a third party

Furthermore, the final rule includes language which states that "access information," such as decryption keys, passwords, or other information that allows access to encrypted data sent, taken, or stored under this provision, is subject to the same export control requirements that apply if the data were not encrypted. Also, BIS clarified that a victim of a security breach related to encrypted data covered under this provision of the EAR will not be considered responsible for the export, re-export, or transfer of that data, so long as the victim did not provide the access information or otherwise allow the unauthorized infiltrator to gain access to the encrypted data.

It is important to note, DDTC has proposed similar rules regarding the sending or storing of encrypted technology or software controlled by the ITAR. However, the DDTC has not issued a final rule exempting exports of technical data to the cloud from ITAR regulations. Therefore, companies dealing in technical data subject to ITAR controls must be able to differentiate between their treatment of ITAR and EAR controlled data for purposes of cloud storage.

ANTI-CORRUPTION MEASURES IN THE TPP AGREEMENT

*By **David Garduno**, GTM Governance, Mexico*

The Trans-Pacific Partnership (TPP) Agreement was signed on February 4th, 2016 after a number of years of negotiations. The twelve countries making up the TPP are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. While the agreement still has to be ratified before it comes into force, this article provides insight into the anti-corruption principles within the text of the agreement.

The TPP's anti-corruption measures

International trade relies on trust between self-governing nations. Confidence in the rule of law is critical for trade and investment to flourish. Corruption, in particular, is an insidious impairment to effective commercial activity and cannot be tolerated as a cost of doing business.

Several prominent measures have been enacted in the past to address international corruption. Among them are the 1977 U.S. Foreign Corrupt Practices Act (FCPA)[1], the 1999 Organization for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials[2], and the 2003 United Nations (UN) Convention Against Corruption[3].

The TPP's Chapter 26: Transparency and Anti-Corruption[4] is a continuance of anti-corruption goals. The overall scope of the Chapter is limited to measures to eliminate bribery and corruption. It specifies such things as: requiring the publication of laws, regulations, procedures and administrative rulings; guaranteeing due process; and promoting rules against conflicts of interest. Enforcement of these clauses is critical.

Article 26.7 (3) of the Agreement declares that; "Each Party shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish liability of legal persons for offences…". In Article 26.6, the Parties affirm their adherence to the Asia-Pacific Economic Community (APEC) Conduct Principles for Public Officials[5]. This encourages and supports the observance of the APEC Code of Conduct for Business: Business Integrity and Transparency Principles for the Private Sector[6]. However, many opponents of TPP are concerned about how, or whether, this provision will be followed by each Party. For example, footnote 8 to Article 26.9 reads; "…individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Party's own domestic laws and legal procedures". So, is Chapter 26 merely a declaration of principles, or will it carry out the hoped-for opposition to corruption? A big concern is that no TPP provision covers corporate criminal liability and due process. Without actual enforcement, TPP will surely fail.

Possible solutions: Tribunals or commission?

Granting that each Party maintains it sovereignty under the TPP and that corruption is to be prosecuted and punished in accordance with each Party's law, what can be done to compel each of the member Parties to enact and then enforce meaningful anti-corruption and bribery laws? It is going to take the resolve of the members to follow-up with each other, to ensure that the required actions have taken place? If this is the case, the expulsion of non-compliant Parties from the TPP may then be required.

Each Party is to establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, if warranted, correction with respect to any matter covered by the agreement. The tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter. This works – if it is carried out.

An alternative solution suggested by some is to establish an anti-bribery commission within the TPP Dispute Settlement process defined in Chapter 28, with the power to investigate, treat, judge, decide, and punish. The Commission's jurisdiction would need to be accepted by the signatory TPP Parties, who have to decide whether such a provision is in alignment with their sovereignty expectations.
In any event, the framework for anti-corruption is already in place within TPP.

1. https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/fcpa-english.pdf
2. http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf
3. https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf
4. https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Text/26.-Transparency-and-Anti-Corruption-Chapter.pdf
5. http://www.apec.org/~/media/Files/Groups/ATCWG/APEC%20ACT%20Principles%20on%20Enforcement.docx
6. http://www.apec.org/groups/som-steering-committee-on-economic-and-technical-cooperation/task-groups/~/media/files/groups/act/07_act_codebrochure.ashx

CLASSIFYING GOODS: A CRUCIAL PART OF YOUR U.S. BUSINESS

*By **Lisa Gray and team**, GTM Governance*

Why is HTS classification important?

The Harmonized Tariff Schedule of the United States (HTSUS) is the foundation of classification. Its roots go back to 1988, when it was adopted by the 200 or so member countries all around the world. Within the principles of the HS, the HTSUS classification determines the duty rate for goods imported, which impacts the profitability of the importer and determines potential restraints on the importing of particular goods. Restraints – such as embargos, anti-dumping and countervailing duties – occur due to quotas put into place by the country's government to protect certain industries. Antidumping (AD) and countervailing (CVD) duty rates are dependent on the country where the product is manufactured.

The HTSUS Classification also supports the North American Free Trade Agreement (NAFTA) and many other Special Trade Programs designed to provide preferential duty rates to importers buying goods from countries deemed to be accepted trading partners.

Given what is dependent on the HTSUS Classification, it is of the utmost importance to get the classification correct – which can be quite the task given the tens of thousands of possibilities. Proper classification is a requirement under Federal Law as well as the Customs Modernization Act, as part of the North America Free Trade Implementation Act of 1993.

The cost of misclassification

Misclassification is not only a non-compliance concern but also comes with the risk of shipment delays, fines, penalties and the likelihood of more scrutiny by Customs and Border Protection (CBP). According to the World Customs Journal, it is the greatest cause of non-compliance.

For many countries, the duties that come from correct classification represent a significant portion of tax revenue – making duty underpayments a lost profit opportunity. According to the World Customs Organization, one out of every three entry lines is misclassified, costing governments worldwide more than US$20 billion per year in duty underpayments.

Ensuring correct classification is the first step of the entire importing process. If a classification error is made, that mistake will follow throughout the entire import chain. In order to be released by CBP, commodities must be classified; an incorrect classification can delay the merchandise release and, in turn, delay its delivery to the final destination.

Consequences of misclassification

If the commodity is misclassified, the importer may be paying the wrong duty and, as a result, calculating an inaccurate profit/loss statement. If the misclassification results in a higher duty, the importer is paying too much. However, if the duty assessed was too low, this can cause even bigger problems with the U.S. government. A misclassification can raise red flags, and lead to CBP issuing a Request for Information form (CF28) or a Notice of Action form (CF29). When this occurs, the importer has to rework or reassess the classification, resulting in extra work. In some instances, the importer has to go back and research the company's entire product database to see if other mistakes were made – causing rework, wasting time and adding costs.

If an importer makes too many misclassifications, CBP will assess large monetary penalties and/or open audits and investigations into the importer's business. This has the potential to hit profits and, in rare cases, can lead to the bankruptcy of the importer's business.

Control the situation

The only way to ensure that your business does not suffer the negative consequences of CBP fines and audits due to misclassifications is to ensure that processes and databases are accurate and reliable, and that employees are properly trained. Outsourcing may be a viable solution for some businesses as it allows them to free up resources from the task of overseeing product classification and product database and focus on other important tasks. Additionally, enlisting the help of a product classification expert can help importers by:

- Saving them more money by taking advantage of preferential duty rates through free trade Agreements

- Applying the latest tools and technology to help manage the classification process
- Conducting a complete review of the current product classification and database to ensuring the importer is compliant in the event of an audit
- Carrying out the necessary research for correct classification and legal precedents

Livingston International understands the intricacies of trade. We can help you navigate the complexities of product classification, and save your business a lot of time and money. If you'd like to explore new possibilities for how your business handles classification processes and databases, contact us. We're here to help.

STRATEGIC TRADE INITIATIVE

If you are reading this publication, global trade is your business and probably your passion too. The Strategic Trade Initiatives Power Ranking chart has been developed with you in mind. As with other passions, like sports, it's all about who is number one, who is trending up, and who is trending down. Based on an objective scoring of five factors, these are the top ten strategic initiatives for trade professionals to be aware of and to plan for. Do you agree? Which ones have the largest impact and will come into force the soonest? What is your number one?

RANK	STRATEGIC TRADE INITIATIVE	STRATEGIC TRADE IMPACT
1	Britain Exit from the European Union	The UK voted in June to leave the European Union. Once Article 50 of the Treaty of Lisbon is invoked, it will be about a 2-year process to exit. Among many issues, the UK will need to establish a go-forward plan on how to conduct trade with the EU and other countries.
2	Comprehensive Economic Trade Agreement	CETA is a free trade agreement between Canada and the European Union. It's in its final stages, with ratification expected before year-end. Implementation could be in early 2017.
3	TransPacific Partnership	TPP is a free trade agreement between 12 countries including the U.S., Canada, Mexico, and Japan. It must be ratified by at least the U.S., Japan, and 4 other countries before it comes into force. The US presidential race looms over U.S. ratification.
4	Automated Commercial Environment	ACE is the decades long project by U.S. CBP to modernize its customs processing and implement a single-window. It has now passed many major launch hurdles and the final pieces such as reconciliation, drawback, and several partner government agencies remain to be launched.
5	WTO Trade Faciliation Agreement	TFA will modernize WTO members' customs operations (single-window, electronic capability, entry requirements, transparent rules and regulations, advanced rulings, post-entry, cooperation among customs authorities, etc.). It needs 2/3rds of members to ratify and is 85% of the way.
6	WCO 2017 Harmonized System Update	The once every 5-years update to the Harmonized System for each of the 154 contracting parties is scheduled for 1-January-2017. There are 234 amendments majorly impacting agriculture, chemicals, machinery, motor vehicles, textiles, wood, and base metals.

7	**Union Customs Code**	The UCC came into force in May 2016 and will be phased-in by the end of 2020. It entails a major revision to EU customs laws. It completes the shift to a paperless environement and requires a fully electronic and interoperable customs environment. Brexit complicates the phase-in process.
8	**Regional Comprehensive Economic Partnership**	RCEP is a free trade agreement in negotiation between the 10 ASEAN countries and China, Japan, Korea, India, Australia, and New Zealand. Negotiations began in 2012, and the 15th round were held in October 2016. RCEP is viewed by China as a counterweight to TPP.
9	**Joint Comprehensive Plan of Action**	The JCPOA (Iran deal), is an agreement on the nuclear program of Iran reached in 2015 between Iran, the P5+1 (the five permanent members of the UN Security Council—China, France, Russia, UK, U.S.—plus Germany), and the EU. Slowly, Iran sanctions are being relaxed.
10	**Transatlantic Trade Investment Partnership**	TTIP negotiations for a free trade agreement between the US and the EU began in 2013. The 15th round of negotiations was held in October amid political pressure against TTIP from within the EU Parties and from both U.S. presidential candidates.

1 The rank is based on objective scoring in five categories: 1) likelihood of being enacted, 2) imminence of coming into force, 3) breadth of GDP coverage, 4) extent of industries affected, and 5) impact to duty and trade processes.