European Semiconductor Industry Association

Submission for the
WCO Conference on Revitalizing the Harmonized System
What is needed for a 21st century HS? (2-3 May 2019)

Brussels, 17 April 2019

The European Semiconductor Industry Association (ESIA) is grateful to the World Customs Organisation (WCO) for the opportunity to provide its views regarding the Harmonised System (HS). ESIA would like to offer the following inputs:

Introduction

- With its international manufacturing process and global supply chains the semiconductor industry is characterized by a high number of international trade transactions. As such it needs to rely on rapid international movement of goods enabled by efficient border processes. ESIA strongly believes that the HS has proved a fundamental tool as it provides a harmonised classification of goods, thereby facilitating cross-border trade.

- The semiconductor industry is at the fore-front of innovation, with one of the highest R&D-to-sale ratio across industry sectors. As such ESIA sees modernisation as crucial and believes the HS should remain fit for purpose and reflect technology developments. ESIA supports the WCO initiative to review the HS to determine how to best modernize the system for improved accuracy, consistency and accessibility.

- The fundamental objective of the HS review should be to provide consistent outcomes and to ensure a simple and predictable system that reduces opportunities for different interpretations and disputes.

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HS review: semiconductor experience

- One of the HS features is that semiconductor HS headings take precedence over any other headings when it comes to classifying products of those HS Chapters. Semiconductors are components which share common characteristics and are used for a lot of different functions in downstream processing. They should continue to be classified according to their essential character rather than by their function, per Note 9(b) to Chapter 85. This ensures coherence to HS classification for semiconductors. ESIA strongly advocates for semiconductor headings to be maintained and their precedence over other headings to be kept in any future HS amendments.

- The gap between the fast semiconductor innovation cycle and the multi-year HS review cycle means that the HS lags many years behind current technology. Because HS legal texts in many cases do not cover new products, these are sometimes classified according to their function by certain jurisdictions, outside the semiconductor HS headings. This is not in line with the precedence rule and results in inconsistent commodity classification.

- The HS was recently updated to reflect technology developments[1], however the risks of inconsistency and misinterpretations remain: the iterative updates and the international alignment process needed to update the HS have resulted in very detailed and complex texts, which do not cover the newest goods and remain behind the current cutting edge products when entering into effect. These texts are very detailed, such that even minor design changes in a given product mean that some Customs jurisdictions interpret that the new product falls outside the semiconductor headings. Diverging classification of identical products increases the risk of disputes or the need for WCO classification decisions, and it ultimately increases administrative burdens for Administrations and industry, with costly delays.

Suggestions for improvement

ESIA recommends implementing the below improvements, to increase efficiency and minimise risks for misinterpretations and inconsistency:

- Shorten the HS review cycle from every five years to every three years, taking into account technological innovation and the shorter industry product development cycles.

[1] The HS 2007 and HS 2017 have seen amendments to the Notes to HS Chapter 85 to include a definition of Multi-Chip Integrated Circuit (2007) and definition of Multi-component Integrated Circuits (2017). In addition, the WCO is currently discussing a further amendment to the nomenclature, to cover semiconductor-based transducers under the semiconductor HS headings.

- Endeavor in reviews to make classification easier to determine, and the nomenclature more user-friendly through clear and un-ambiguous texts. However, the possibility of over-simplification poses its own set of risks to both traders and Customs administrations. Thus, rendering the texts too simple could also mean that they become too generic, thereby creating doubts and differences of interpretation and undermining the precedence provision in Note 9(b) to Chapter 85. Any future HS amendments or revisions to headings 8541 and 8542 should uphold Note 9(b) and strike the right balance, e.g. definitions should limit references to specific details related to manufacturing operations or specific constructions or compositions.

- Increase the opportunities for private sector consultation, including the establishment of formalised dialogue mechanisms between industry, WCO and Customs to assist the HS review process.

- Improve the access to WCO resources such as explanatory notes. Today access to the WCO Explanatory Notes Database is only available through a fee-based subscription system, widely restricting access. Also further free online databases should be considered.

- In order to safeguard the uniform application of the HS classification decisions of WCO Harmonized System Committee (HSC) – commodity classification should be binding for all WCO Members.

About ESIA: ESIA is the voice of the Semiconductor Industry of Europe. Its mission is to represent, promote and defend the common interests of the Europe-based semiconductor industry in order to ensure a sustainable business environment and foster its global competitiveness. As a provider of key enabling technologies the industry creates innovative solutions for industrial development, contributing to economic growth and responding to major societal challenges. Being ranked as the most R&D intensive sector by the European Commission, the European semiconductor ecosystem supports approx. 200.000 jobs directly and up to 1.000.000 indirect jobs in systems, applications and services in Europe. Overall, micro- and nano-electronics enable the generation of at least 10% of GDP in Europe and the world.

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