

The ITA II: Successful Trade Liberalization

Aaron Marx*

The Information Technology Agreement (ITA) is an international agreement aimed at increasing worldwide trade of information technology products by removing barriers to trade. Specifically, the ITA is a tariff cutting mechanism implemented by the World Trade Organization. Each country that participates in the ITA agrees to reduce the duties on certain products to zero. After years of negotiations, the Committee of Participants on the Expansion of Trade in Information Technology Products has proposed an updated list of products to be given duty-free treatment. This article examines the updated product list from the perspective of implementation at the Customs level, and offers insight into how to receive the benefits of reduced duty treatment.

1 INTRODUCTION

The Information Technology Agreement (ITA) is focused primarily on the trade in information technology products. Trade in information technology products plays a key role in the development of information industries, in the dynamic expansion of the world economy, and in the standards of living of people around the world. The reduction of duties to zero on information technology products represents the removal of a substantial trade barrier. The World Trade Organization (WTO) sought, by implementing the ITA, to expand the production of and trade in information technology products, and to maximize the freedom of that trade. Sixty-seven countries currently participate in the ITA, including the twenty-eight Member States of the European Union.¹ Six more

countries are scheduled to participate once their accession to the WTO is complete.

The original ITA (formally known as the “Ministerial Declaration on Trade in Information Technology Products”) was concluded at the Singapore Ministerial Conference of the WTO in December of 1996.² The original ITA covered 222 categories of products.³

On July 18, 2015, the ITA Committee achieved a breakthrough in the negotiations over an Expansion of the Information Technology Agreement (the “ITA II”).⁴ The talks began in 2012,⁵ and had stalled several times over the years due to stalemates between certain countries. The compromise deal reached by the ITA Committee ended years of negotiations between the member countries over what additional products would be added to the ITA. The

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¹ See ITA Schedule of Concessions, available at https://www.wto.org/english/tratop_e/inftec_e/itscheds_e.htm#2

² See “Ministerial Declaration on Trade in Information Technology Products,” dated Dec. 13, 1996, available at https://www.wto.org/english/docs_e/legal_e/itadec_e.pdf

³ *Ibid.* at 6–18.

⁴ See WTO 2015 News Items, “WTO members move close to deal on ITA expansion,” dated Jun. 18, 2015, available at https://www.wto.org/english/news_e/news15_e/ita_20jul15_e.htm.

⁵ See WTO 2012 News Items, “Informal talks set to begin on expanding the Information Technology Agreement,” dated May 15, 2012, available at https://www.wto.org/english/news_e/news12_e/ita_15may12_e.htm.

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expanded list, released publicly on July 24, 2015, contains an additional 201 categories of products.⁶

The first officially released list contained over 450 distinct proposals.⁷ Many of the proposals were two similar versions of the same proposal, so it was natural that some would drop off the final list. Many large groups of products were removed from the list for political reasons, such as batteries of heading 8507, and televisions of heading 8525. And during the negotiations, proposals for previously unconsidered products were added to the list, and even survived the final cut.

While the original list of product categories has been in place for decades, the expanded list is still in its infancy. This article will examine how the new ITA II provisions will be implemented from a Customs perspective, and the potential timing of those implementations. This article will also discuss how importers could benefit from the reduced duties in the agreement.

The only requirement for the inclusion of a proposal was that it must be “information and communications technology related,” or “ICT related.” There is no universally accepted definition of this phrase. The original concept paper for the ITA expansion program listed several examples, such as “(a) products capable of processing digital signals; (b) products that can send or receive digital signals with or without lines; (c) ICT manufacturing equipment; and (d) related components, attachments, and parts.”⁸

2 THE HARMONIZED TARIFF SYSTEM

The International Convention on the Harmonized System entered into force in January of 1988.⁹ This convention created the Harmonized Commodity Description and Coding System, also known as the “Harmonized Tariff System,” or “HTS” is a multipurpose international product nomenclature developed by the World Customs Organization (“WCO”). According to the WCO’s website, the HTS comprises about 5,000 commodity groups. Each group is identified by a six-digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. The system is used by more than 200 countries and economies as a basis for

their Customs tariffs and for the collection of international trade statistics. Over 98% of the merchandise in international trade is classified in terms of the HTS. The HTS is thus a universal economic language and code for goods, and an indispensable tool for international trade.¹⁰

The HTS is maintained by the WCO. The HTS is periodically updated through the Harmonized System Committee (representing the Contracting Parties to the HTS Convention).¹¹ This Committee examines policy matters, takes decisions on classification questions, settles disputes and prepares amendments to the Explanatory Notes. This Committee also prepares amendments updating the HTS every five-six years.¹² The HTS was recently updated in both 2007 and 2012, and the Committee plans to update the HTS in 2017.¹³

Duty-free treatment for imported goods under the ITA II is dependent on its classification under the HTS. Because all of the participating countries use the same classification codes at the four- and six-digit level, it provides a common language for the implementation of the ITA II. The expansion of coverage proposed by the ITA II is expressed in terms of the 2007 version of the HTS, because not all WTO member countries have adopted the 2012 version.

3 IMPLEMENTATION OF THE ITA II: THE TEXT OF THE PROPOSALS

3.1 Six-Digit Classification Proposals

Nearly three quarters of the ITA II’s expanded list are six-digit classification proposals. From a Customs perspective, they are quite easy to implement. The national tariff schedules of the participating countries are nearly identical at the six-digit classification level because of the HTS. As such, implementation of a six-digit proposal requires no change to the text of a country’s national tariff schedule. Implementation requires only a modification to the applied duty rate.

The ITA and ITA II are intended to cover products which are “ICT related.” As discussed above, there is no clear definition of the term. Instead, the ITA and ITA II lists themselves are examples of products which are

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⁶ See “Declaration on the Expansion of Trade in Information Technology Products,” dated Jul. 28, 2015, pp. 4–9.

⁷ See U.S. Int’l. Trade Commission Publication 4355, “The Information Technology Agreement: Advice on the Proposed Expansion: Part 1,” dated October 2012, available at <http://www.usitc.gov/publications/332/pub4355.pdf>.

⁸ See “Concept Paper for the Expansion of the ITA,” Doc. G/IT/W/36, dated May 12, 2012, para. 6.

⁹ See “International Convention on the Harmonized System,” Art. 13, available at http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs_convention.aspx.

¹⁰ See <http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>.

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¹³ See <http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs-nomenclature-2017-edition/amendments-effective-from-1-january-2017.aspx>.

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considered to be “ICT related.” During the negotiations, many proposals were dropped because the Committee agreed that the products did not meet these criteria. In other cases, non-ICT products were carved out of the proposals, such that they would be excluded from coverage.

For example, the proposals which cover subheadings 3701.30 (which provides for “Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; ...: Other plates and film, with any side exceeding 255 mm”) and 3701.99 (which provides for “Photographic plates and film in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles; ...: Other”), would provide duty-free treatment to any goods classified under either subheading. These proposals were intended to specifically capture products known as “photomask blanks,” which are glass plates covered on one side with a layer of chrome and on the other side with a chemical photoresist. These products are used in the manufacture of integrated circuits. To implement these specific proposals, a participating country need only modify the applied duty rates of subheadings 3701.30 and 3701.99 to zero. The remaining subheadings are not “ICT related,” and as such are not included in the scope of the ITA II.

Likewise, the proposals for 9032.20 (which provides for “manostats”) and 9032.81 (which provides for certain other hydraulic or pneumatic regulating and controlling apparatus) would provide duty-free treatment to any goods classified under either subheading. In the original proposal, all of the subheadings under heading 9032 were proposed for duty free treatment.¹⁴ But those other proposals were dropped during the negotiations, as the Committee decided the products were not ICT related.

In another example, many of the subheadings of 9031 (which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof”) are to be afforded duty-free treatment. Subheadings 9031.10, 9031.49, 9031.80, and 9031.90 are included in the ITA II. Subheading 9031.41 was already covered by the first ITA. However, neither agreement covers subheading 9031.20, which provides for “Test Benches.”¹⁵ As such, any participating country is free to charge duty on these test benches, but not any other products classified under heading 9031.

In certain cases, all of the six-digit subheadings of a specific heading are provided for in the expanded product list of the ITA II. The effect is to give duty free treatment to the entire four-digit heading.

Heading 8486, which provides for “Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this chapter; parts and accessories,” did not exist at the time of the first ITA. It was created by the WCO for the 2007 version of the HTS. The ITA II contains individual proposals for each of the subheadings of heading 8486, namely 8486.10, 8486.20, 8486.30, 8486.40, and 8486.90. Because all of the subheadings are to be given duty-free treatment, the effect of these proposals is to give duty-free treatment to the entire heading.

Heading 8542 provides for “Electronic integrated circuits; parts thereof”. Both the 2007 and 2012 version of the HTS include subheadings 8542.31, 8542.32, 8542.33, 8542.39, and 8542.90, and each of these subheadings is linked to an individual proposal in the ITA II. As with heading 8486, the effect of these proposals is to give duty-free treatment to the entirety of heading 8542.

The ITA II is also intended to interlock with the first version of the ITA from 1997, and, to expand the partial coverage provided for in the first ITA to full coverage of the entire heading. For instance, the first ITA covered all of the subheadings of heading 9027 (which provides for “Instruments and apparatus for physical or chemical analysis (e.g., polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof”), except for subheading 9027.10 and certain products classified within 9027.90. The ITA II product list includes the entire six-digit subheadings of 9027.10 and 9027.90, which means that the entirety of heading 9027 is to be afforded duty-free treatment.

There are some discrepancies between the 2007 and 2012 versions of the Harmonized System, which individual proposals try to address.

For example, the ITA II contains individual proposals for each of the subheadings of heading 8523 (which provides for “Discs, tapes, solid-state non-volatile storage devices, ‘smart cards’ and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37”), namely 8523.21,

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¹⁴ See U.S. Int’l. Trade Commission Publication 4355, at pp. 2–48 to 2–49.

¹⁵ EN(2) to heading 90.31 states that the heading includes “Test benches for engines and motors, electrical generators, pumps, speed indicators or tachometers, etc., consisting of a frame and a measuring or calibrating instrument.” A proposal for 9031.20 was included in the original list (See U.S. Int’l. Trade Commission Publication 4355, at p. 2–47), but was dropped during the negotiations.

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8523.29, 8523.40, 8523.51, 8523.52, 8523.59, and 8523.80. Because all of the subheadings are to given duty-free treatment, the effect is to give duty-free treatment to the entire heading. However, subheading 8523.40, which provides for “Optical media”, was renumbered in the 2012 version of the HTS. It was broken into two new subheadings, namely 8523.41 (which provides for “Optical media: Unrecorded”) and 8523.49 (which provides for “Optical media: Other”). However, because both of these new subheadings still cover “optical media”, the ITA II proposal for the 2007 version of 8523.40 is intended to extend to the 2012 version of 8523.41 and 8523.49. As such, the ITA II proposes duty-free treatment for the entirety of heading 8523, whether the participating country is using the 2007 or 2012 versions of the HTS.

In some cases, the discrepancy between the 2007 and 2012 versions of the HTS required the use of an “ex-out” proposal. A specific instance will be discussed later in this article.

For the one hundred forty-one (141) proposals which cover an entire six-digit subheading, implementation and administration from the Customs perspective is quite simple. No changes are required to the subheading texts of a participating country’s national tariff schedule. The only

requirement is that the products classified in those subheadings are given duty-free treatment.

3.2 “Ex-out” Provisions

An “ex-out” provision is a proposal to cover a certain grouping of products within a six-digit subheading, rather than the entire six-digit subheading. These provisions are noted in the ITA II proposal list with the letters “ex” in the third column. The purpose of an ex-out provision is to carve out a smaller product grouping for special duty free treatment. The ITA II includes fifty such proposals.

Implementation of an ex-out proposal at the Customs level will usually require the modification of the text of a country’s national tariff schedule.¹⁶ In practical terms, this generally means that an eight-digit classification must be added. However, if a country chooses to grant duty-free treatment to the entire six-digit subheading, then the text of the national tariff schedule need not be modified.

There are four reasons that the ITA Committee proposed the implementation of an ex-out, rather than provide duty-free coverage for the entire six-digit subheading. In some cases, the proposal was necessary to resolve discrepancies between the 2007 and 2012 versions of the HTS. In some cases, the ex-out proposal language was taken directly from a particular country’s national tariff schedule. In some cases, the ex-out proposal was

crafted specifically to obtain duty free treatment for specific products made by certain manufacturers. And finally, some ex-out proposals were crafted to exclude certain products from duty-free treatment.

3.2.1 *The Language of the Ex-out is Specifically Intended to Cover the Updated 2012 HTS Language*

In some cases, the language of the HTS changed between the 2007 and 2012 versions. While the ITA II is based on the language of the 2007 version, certain ex-outs use language from the 2012 version to aid in the eventual transition.

For example, the 2012 version of the HTS includes subheading 9504.50, which provides for “Video game consoles and machines, other than those of subheading 9504.30”. This subheading does not exist in the 2007 version of the HTS. To resolve this issue, the ITA Committee added an ex-out provision for subheading 9504.90, and used the exact same language contained in the 2012 version of subheading 9504.50. For countries which have already implemented the 2012 version, they need only give duty free treatment to the six-digit subheading 9504.50. However, countries which have only implemented the 2007 version must instead modify their national tariff schedules to include this language as an eight-digit classification under subheading 9504.90. This way, the same duty-free treatment is provided no matter which version of the HTS is in use by a particular country.

3.2.2 *The Language of the Ex-out was Taken Directly from the Text of the Eight-Digit Classification in a Specific Country’s National Tariff Schedule*

In some cases, a negotiating country proposed inclusion of a specific “information technology related” product or group of products in the ITA II, for which that country already had language covering that product written into its national tariff schedule.

For example, the ex-out provision for subheading 9018.90 provides for duty-free coverage of “Electro-surgical or electro-medical instruments and appliances, and parts and accessories thereof.” This language was taken directly from the Harmonized Tariff System of the United States (or, the “HTSUS”), specifically in the eight-digit national classifications 9018.90.60, 9018.90.64, 9018.90.68, and 9018.90.75, HTSUS. The United States will not have to modify the text of its national tariff

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3.2 “Ex-out” Provisions

An “ex-out” provision is a proposal to cover a certain grouping of products within a six-digit subheading, rather than the entire six-digit subheading. These provisions are noted in the ITA II proposal list with the letters “ex” in the third column. The purpose of an ex-out provision is to carve out a smaller product grouping for special duty free treatment. The ITA II includes fifty such proposals.

Implementation of an ex-out proposal at the Customs level will usually require the modification of the text of a country’s national tariff schedule.¹⁶ In practical terms, this generally means that an eight-digit classification must be added. However, if a country chooses to grant duty-free treatment to the entire six-digit subheading, than the text of the national tariff schedule need not be modified.

There are four reasons that the ITA Committee proposed the implementation of an ex-out, rather than provide duty-free coverage for the entire six-digit subheading. In some cases, the proposal was necessary to resolve discrepancies between the 2007 and 2012 versions of the HTS. In some cases, the ex-out proposal language was taken directly from a particular country’s national tariff schedule. In some cases, the ex-out proposal was

crafted specifically to obtain duty free treatment for specific products made by certain manufacturers. And finally, some ex-out proposals were crafted to exclude certain products from duty-free treatment.

3.2.1 *The Language of the Ex-out is Specifically Intended to Cover the Updated 2012 HTS Language*

In some cases, the language of the HTS changed between the 2007 and 2012 versions. While the ITA II is based on the language of the 2007 version, certain ex-outs use language from the 2012 version to aid in the eventual transition.

For example, the 2012 version of the HTS includes subheading 9504.50, which provides for “Video game consoles and machines, other than those of subheading 9504.30”. This subheading does not exist in the 2007 version of the HTS. To resolve this issue, the ITA Committee added an ex-out provision for subheading 9504.90, and used the exact same language contained in the 2012 version of subheading 9504.50. For countries which have already implemented the 2012 version, they need only give duty free treatment to the six-digit subheading 9504.50. However, countries which have only implemented the 2007 version must instead modify their national tariff schedules to include this language as an eight-digit classification under subheading 9504.90. This way, the same duty-free treatment is provided no matter which version of the HTS is in use by a particular country.

3.2.2 *The Language of the Ex-out was Taken Directly from the Text of the Eight-Digit Classification in a Specific Country’s National Tariff Schedule*

In some cases, a negotiating country proposed inclusion of a specific “information technology related” product or group of products in the ITA II, for which that country already had language covering that product written into its national tariff schedule.

For example, the ex-out provision for subheading 9018.90 provides for duty-free coverage of “Electrosurgical or electro-medical instruments and appliances, and parts and accessories thereof.” This language was taken directly from the Harmonized Tariff System of the United States (or, the “HTSUS”), specifically in the eight-digit national classifications 9018.90.60, 9018.90.64, 9018.90.68, and 9018.90.75, HTSUS. The United States will not have to modify the text of its national tariff

Notes

¹⁶ See “Ministerial Declaration on Trade in Information Technology Products,” para. 2(b), pp. 4–9.

schedule, because this language is already included. However, participating countries which do not use this language will have to modify the text of their tariff schedules to comply with the ITA II.

Likewise, the ex-out provision for subheading 8803.90 provides duty-free coverage for “parts of telecommunications satellites.” This language was taken directly from the national tariff system of the Philippines, specifically the eight-digit national classification 8803.90.10. Participating countries which charge duty on subheading 8803.90 will be required to modify their national tariff schedules to include duty free treatment for these goods.

3.2.3 *The Language of the Ex-out was Crafted to Cover a Specific Product Made a by a Specific Company or Industry*

This type of ex-out proposal is by far the most common. Some proposals are intended to provide duty free treatment to a small class of products, such as:

Proposal 007 (ex 8414.59): “Fans of a kind used solely or principally for cooling microprocessors, telecommunication apparatus, automatic data processing machines or units of automatic data processing machines”. This proposal covers fans used inside computers.

Proposal 013 (ex 8432.20): “Scales for continuous weighing of goods on conveyors using electronic means for gauging weights.” This proposal covers certain types of scales that were determined to be ICT related by the Committee. There are several other ex-out proposals for other scales in the same heading.

Proposal 049 (ex 8505.90): “Electromagnets of a kind used solely or principally for magnetic resonance imaging apparatus other than electromagnets of heading 90.18.” This proposal covers an integral component of MRI machines, without including all types of electromagnets.

Proposal 114 (ex 8543.70): “Portable battery operated electronic reader for recording and reproducing text, still image or audio file.” This proposal was created to give duty free treatment to electronic readers, such as the Kindle™ and Nook.™

A few ex-out proposals are crafted to cover a specific product made by a specific manufacturer. Some examples include:

Proposal 001 (ex 3506.91): “Optically clear free-film adhesives and optically clear curable liquid adhesives of a kind used solely or principally for the manufacture of flat panel displays or touch-sensitive screen panels.” This product is intended to cover a specific adhesive used in the manufacture of flat panel displays.

Proposal 008 (ex 8419.50): “Heat exchange units made of fluoropolymers and with inlet and outlet tube bores with

inside diameters measuring 3 cm or less.” This proposal is intended to cover a specific, expensive precision instrument used in the manufacture of semiconductors.

Proposal 010 (ex 8421.29) “Liquid filtering or purifying machinery and apparatus made of fluoropolymers and with filter or purifier membrane thickness not exceeding 140 microns.” Like Proposal 008, this proposal is intended to cover a specific, expensive precision instrument used in the manufacture of semiconductors.

Proposal 115 (ex 8543.70): “Digital signal processing apparatus capable of connecting to a wired or wireless network for the mixing of sound.” This proposal is intended to cover a specific type of DJ mixing equipment.

3.2.4 *The Ex-out Language Was Crafted to Include All Products within a Certain Six-Digit Subheading, with the Exception of Certain Products*

In certain cases, a given six-digit subheading may contain mostly products which are “information technology related,” but also contain some products that are not. The ITA Committee crafted ex-out provision language which would include almost all products within that subheading, but carve out an exception for products which may still be treated as dutiable.

The ex-out provision for 9030.33 stands out in this regard. All of the other six-digit subheadings under heading 9030 (which provides for “Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof”), are to be afforded duty-free treatment. The expanded ITA II list includes subheadings 9030.10, 9030.20, 9030.31, 9030.32, 9030.39, 9030.84, 9030.89, and 9030.90. Subheadings 9030.40 and 9030.82 are not included in the ITA II, because they have already been given duty free treatment under the first ITA. As such, the entirety of heading 9030 is to be given duty free treatment—except for the ex-out provision in 9030.33. This proposal provides duty free treatment for “[O]ther instruments and apparatus, for measuring or checking voltage, current, resistance or power: Other, without a recording device, excluding resistance measuring instruments”. In practical terms, any ITA II participant is thereby allowed to craft a dutiable provision at the eight-digit level specifically for resistance measurement devices without a recording function, should they wish to do so. All other products classified under heading 9030 must be given duty-free treatment. Of course, the participating countries need not impose duties on these resistance measurement devices, but they may do so without violating their responsibilities under the ITA II.

schedule, because this language is already included. However, participating countries which do not use this language will have to modify the text of their tariff schedules to comply with the ITA II.

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Likewise, the ex-out provisions for 9013.10 and 9013.90 are designed to exclude a specific product from duty free treatment. Subheading 9013.10 covers “Telescopic sights for fitting to arms; periscopes; telescopes designed to form parts of machines, appliances, instruments or apparatus of this Chapter or Section XVI”. The ex-out proposal for 9013.10 *omits* the phrase “telescopic sights for fitting to arms; periscopes” but includes all the other language. The ex-out proposal for 9013.90 is similar, in that it covers “Parts and accessories, other than for telescopic sights for fitting to arms or for periscopes”. As such, it is made clear that the ITA II provides duty free treatment for any product classified under subheadings 9013.10 or 9013.90 which is *not* a gun sight or periscope, or a part thereof.

One interesting side effect of crafting the language in this manner is duty free treatment for products which are not ICT related, despite the best intentions of the Committee. Subheading 9013.80 was originally included in the proposed list.¹⁷ It was decided during the negotiations that this proposal be dropped because it contained non-ICT products like hand magnifying glasses and magnifiers and so-called door-eyes, for viewing through doors. However, parts of these goods are not excluded by the ex-out language proposed for subheading 9013.90. As such, the metal handle of a hand magnifying glass, a decidedly non-ICT product, is to be afforded duty free treatment under the ITA II. Likewise, even though certain measuring or checking instruments are excluded from the ITA II by the language of the 9030.33 ex-out provision, separately imported parts of these goods are to be given duty free treatment under the six-digit proposal for 9033.90.

3.3 Attachment B Proposals

The Attachment B list is where the most complicated proposals ended up. For the most part, the proposals on this list were placed there because of a classification dispute. One group of negotiating countries believed that a particular good was classified in a certain heading, and another group of countries believed that the same good was classified in a different heading. The countries would then simply agree to disagree, and place the proposal in Attachment B.

Participating countries would then be allowed to create the appropriate subheading in their national tariff schedule wherever they believed it was correctly classified. The classification dispute does not get resolved, but the countries agree to afford the product duty free treatment regardless.

3.3.1 Classification Disputes Involving Heading 8486

Certain Attachment B proposals share a common classification dispute. Certain countries argued that information technology products should be classified under heading 8486, with machines used in the manufacture of semiconductors or flat panel displays. Other countries argued that the goods were properly classified outside of that heading, yet agreed that they should be eligible for duty free treatment. Most often, the classification dispute revolved around the operation of Note 9(D) to Chapter 84 and Note 2 to section XVI. For those countries which classify the products in heading 8486, no changes to the national tariff schedule are necessary—as the goods listed here in Appendix B are already covered by an earlier proposal. But for those countries which classify the products outside of heading 8486, the Attachment B proposal is treated like an ex-out provision—the country must modify its national tariff schedule at the 8-digit level to provide duty free treatment for the products listed herein:

Proposal 197 (“Self-adhesive circular polishing pads of a kind used for the manufacture of semiconductor wafers”): The negotiating countries disputed whether the product described in this text was properly classified under subheading 8486.90 (which provides for “Parts and accessories” of machines and apparatus of a kind used solely or principally for the manufacture of semiconductor devices) or as an ex-out provision under subheading 3919.90 (which provides for “Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other”).

Proposal 198 (“Boxes, cases, crates and similar articles, of plastic, specially shaped or fitted for the conveyance or packing of semiconductor wafers, masks, or reticles, of subheading 3923.10 or 8486.90”): As indicated in the text of the proposal itself, the negotiating countries disputed whether the product was properly classified under 8486.90, or as an ex-out under subheading 3923.10 (which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Boxes, cases, crates and similar articles”).

Proposal 199 (“Vacuum pumps of a kind used solely or principally for the manufacture of semiconductors or flat panel displays”): The negotiating countries disputed whether the product described in this text was properly classified under subheading 8486.30 (which provides for “Machines and apparatus for the manufacture of flat panel displays”) or as an ex-out provision under subheading 8414.10 (which provides for “Vacuum pumps”).

Notes

¹⁷ See U.S. Int'l. Trade Commission Publication 4355, at p. 2–39.

Likewise, the ex-out provisions for 9013.10 and 9013.90 are designed to exclude a specific product from duty free treatment. Subheading 9013.10 covers “Telescopic sights for fitting to arms; periscopes; telescopes designed to form parts of machines, appliances, instruments or apparatus of this Chapter or Section XVI”. The ex-out proposal for 9013.10 *omits* the phrase “telescopic sights for fitting to arms; periscopes” but includes all the other language. The ex-out proposal for 9013.90 is similar, in that it covers “Parts and accessories, other than for telescopic sights for fitting to arms or for periscopes”. As such, it is made clear that the ITA II provides duty free treatment for any product classified under subheadings 9013.10 or 9013.90 which is *not* a gun sight or periscope, or a part thereof.

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Proposal 198 (“Boxes, cases, crates and similar articles, of plastic, specially shaped or fitted for the conveyance or packing of semiconductor wafers, masks, or reticles, of subheading 392310 or 848690”): As indicated in the text of the proposal itself, the negotiating countries disputed whether the product was properly classified under 8486.90, or as an ex-out under subheading 3923.10 (which provides for “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Boxes, cases, crates and similar articles”).

Proposal 199 (“Vacuum pumps of a kind used solely or principally for the manufacture of semiconductors or flat panel displays”): The negotiating countries disputed whether the product described in this text was properly classified under subheading 8486.30 (which provides for “Machines and apparatus for the manufacture of flat panel displays”) or as an ex-out provision under subheading 8414.10 (which provides for “Vacuum pumps”).

Notes

¹⁷ See U.S. Int’l. Trade Commission Publication 4355, at p. 2–39.

3.3.2 Classification Disputes Involving Other Headings

Other Attachment B proposals involved a classification dispute that had nothing to do with heading 8486:

Proposal 193 (“Light-Emitting Diode (LED) Backlights modules, which are lighting sources that consist of one or more LEDs, and one or more connectors and are mounted on a printed circuit or other similar substrate, and other passive components, whether or not combined with optical components or protective diodes, and used as backlights illumination for liquid crystal displays (LCDs)”: These products are used inside LCD screens. There was a classification dispute as to whether these backlights are considered parts of an LCD screen (classifiable under either subheading 9013.90 or subheading 8529.90), parts of a computer (classifiable under subheading 8473.30), or whether they are themselves “lamps” within the meaning of that term (classifiable under subheading 8543.70 or heading 9405). The classification dispute itself was submitted to the Harmonized System Committee of the WCO in September 2012, and as of this writing, has still not been resolved.

Proposal 195 (“Ink cartridges (with or without an integrated print head) for insertion into apparatus of HS

subheadings 8443.31, 8443.32 or 8443.39, and incorporating mechanical or electrical components; thermoplastic or electrostatic toner cartridges (with or without moving parts) for insertion into apparatus of HS subheadings 8443.31, 8443.32 or 8443.39; solid ink in engineered shapes for insertion into apparatus of HS subheadings 8443.31, 8443.32 or 8443.39”): The three products described by this proposal are various types of ink cartridges used in modern printers. There was a classification dispute between the negotiating parties as to whether these products were properly classified under subheading 8443.99 (which provides for parts and accessories of printers and duplicating machines), or under heading 3215 (which provides for “Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid”). The United States and the European Union, for instance, are bound by certain court decisions to classify these products in different headings.¹⁸

Proposal 196 (“Printed matter which grants the right to access, install, reproduce or otherwise use software (including games), data, internet content (including in-game or in-application content) or services, or telecommunications services (including mobile services)”):

The products covered by this proposal are paper or plastic cards which contain a code written on them. By entering this code into a computer, the holder of the card may gain access to certain downloadable content. There was no real dispute that these products are properly classified under heading 4911, which provides for “other printed matter.” The dispute came at the six-digit level, specifically, whether these products were considered “Trade advertising material, commercial catalogs and the like” (of subheading 4911.10), or not (subheading 4911.99). This proposal would require a participating country to create in eight-digit subheading in its national tariff schedule, depending on its classification position.

Proposal 200 (“Plasma cleaner machines that remove organic contaminants from electron microscopy specimens and specimen holders”): There was a dispute between the negotiating countries as to whether this product was classified as an ex-out under subheading 8456.90 (which provides for “Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron-beam, ionic-beam or plasma arc processes; water-jet cutting machines: Other”), or as an ex-out under subheading 8543.70 (which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus”). At issue was whether heading 8546 requires the use of a plasma arc process, or whether the plasma cleaning is an electro-chemical process provided for in the text of the heading.

Proposal 201 (“Portable interactive electronic education devices primarily designed for children”): These products are primarily electronic devices similar in shape and design to tablet computers, but with a limited functionality. There was a dispute between the negotiating countries as to whether this product should be classified as an ex-out under subheading 8543.70, or whether it should be classified as an ex-out under heading 9503 (which provides for toys) or 9504 (which provides for video games). The question was whether these devices met the definition of either a “toy” or a “video game,” or whether they were simply classified in the 8543.70 basket provision.

3.3.3 Other Problematic Classification Issues

Finally, Attachment B contains two of the most difficult provisions in the expanded list: touch screens and multi-component integrated circuits (also known as “MCOs”):

Notes

¹⁸ In *Mita Copystar America v. United States*, 160 F.3d 710 (Fed. Cir. 1998), the Court of Appeals for the Federal Circuit held that toner cartridges for photocopier machines were properly classified as “parts and accessories of electrostatic photocopying apparatus,” under subheading 9009.90.00 (which was moved to subheading 8443.99 in the 2007 version of the HTS); In *Turbon Int'l. GmbH v. Oberfinanzdirektion Koblenz*, Case C250/06 (Eur. Ct. Just. 2006), the European Court of Justice held that ink cartridges for color ink printers were properly classified under heading 3215.

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