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**THE 2017 EDITION OF THE HARMONIZED COMMODITY DESCRIPTION AND CODING
SYSTEM (HS SYSTEM)**

(Prepared by the UNIDROIT Secretariat)

1. Since the commencement of the Study Group's work in 2014, MAC Protocol drafts have been based upon the 2012 fifth edition of the Harmonized Commodity Description and Coding System (hereafter the "HS System"). All HS codes currently contained in the Annexes to the preliminary draft Protocol (Study 72K – CGE2 – Doc. 2) are based upon the 2012 fifth edition of the HS System. However, the World Customs Organization (WCO) recently released a new sixth edition, which entered into force in 2017. This document explains how the recent release of the 2017 sixth edition HS System will affect the preliminary draft MAC Protocol.
2. This document will:
 - (i) Explain the process for the amendment of the HS System.
 - (ii) Describe how the 2017 edition affects the 36 HS codes contained in the preliminary draft MAC Protocol.
 - (iii) Use the differences between the 2012 and 2017 editions of the HS System to hypothetically demonstrate how Article XXXII of the preliminary draft Protocol would be expected to operate.
3. This document is based upon feedback provided by the WCO on the Annexes to the preliminary draft MAC Protocol.

Amendments to the HS System

4. The HS System, as reflected in the International Convention on the Harmonized System (hereafter the "HS Convention") is regularly revised at 5-6 year intervals. The HS Committee is responsible for amending and updating the HS System. Established pursuant to Article 6 of the HS Convention, the Committee includes a representative from every member country. The Committee is vested with the power to update the HS System reflecting the changes in and emergence of new technologies as well as new patterns of international trade. The HS Committee established a HS Review Sub-Committee to systematically and regularly review the HS System.

5. Amendments to the HS Convention, including the HS System, may be adopted pursuant to Article 16 of the HS Convention upon recommendation of the WCO Council. First, the Council will make the amendment available for public comment. Second, member countries will be given a period of six months within which they may file objections. If, at the end of the six-month period, no objections have been filed, the amendment will be deemed to be adopted. After an amendment has become effective, no country may accede to the Convention without adhering to the amendment. However, because of the changes that countries will need to implement to reflect the amendment, amendments enter into full force about two years after their adoption. Accordingly, the entire procedure to amend the HS System takes at least two and a half years from the moment the Council adopts an amendment Recommendation.

6. In general, amendments are made to the HS System for two reasons: (i) clarification and/or (ii) structural reorganisation. For instance, different codes for similar goods that are not traded heavily on a cross-border basis are merged. Similarly, where trade of goods under a certain HS code increases and becomes more specialised, an HS code might be subdivided into more specific 6 digit HS codes. The HS 1996 amendments included some major structural changes to food, tropical woods, steel and electronic products; the HS 2002 amendments were mainly related to wood, paper, waste of chemicals and pharmaceuticals, and metals; and the HS 2007 amendments focused on information technology and communication products. The 2012 edition incorporated 234 amendments, majority of which amendments were included based on the recommendations of the Food and Agriculture Organisation of the United Nations (FAO). For instance, FAO suggested revisions with respect to the codes relating to fish and fishery products in order to enhance their monitoring for food security purposes. Some amendments also resulted from changes in international trade patterns (e.g., the separate headings 69.07 for unglazed ceramic products and 69.08 for glazed ceramic products in the 2007 version were merged into a single heading in the 2012 version).

7. In addition to the clarifying and structural changes, amendments typically include a number of less significant changes, such as the deleting of subheadings that cover products with low trade volumes and the correcting of errors in previous HS editions. Of all subheadings, 72 percent have never been changed by any amendment.

The 2017 amendments to the HS System

8. The sixth edition of the HS System (hereafter the “2017 edition”) entered into force on 1 January 2017. The WCO notes that environmental and social issues of global concern were major factors in producing the sixth edition.¹ The sixth edition comprises of 233 sets of amendments from the 2012 edition, divided as follows:

- 85 amendments related to the agricultural sector
- 45 amendments related to the chemical sector
- 13 amendments related to the wood sector
- 15 amendments related to the textile sector
- 6 amendments related to the base metal sector
- 25 amendments related to the machinery sector
- 18 amendments related to the transport sector
- 26 amendments related to the other sectors

9. Four codes of the 36 HS codes currently listed in the Annexes to the preliminary draft MAC Protocol have been affected by the 2017 amendments:

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

- (i) **842481**: Mechanical appliances (whether or not hand-operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines – Other appliances -- Agricultural or Horticultural
- (ii) **843230**: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Seeders, planters and transplanters
- (iii) **843240**: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Manure Spreaders and fertilizer distributors
- (iv) **870190**: Tractors (other than tractors of heading 8709) – Other

(i) *2017 amendment effect on HS code 842481*

10. HS code 842481 was simply renumbered as HS code 842482 in the 2017 edition. This change did not affect the scope of the equipment to which the HS code applies. This is an example of a structural reorganisation change to the HS System where a code technically changes number, but is not affected in any substantive way.

(ii) *2017 amendment effect on HS code 843230*

11. In the 2012 edition, HS code 843230 applied to agricultural, horticultural or forestry machinery for soil preparation or cultivation, and in particular seeders, planters and transplanters. In the 2017 edition, this HS code has been subdivided into two separate HS codes:

- (i) 843231 – No-till direct seeders, planters and transplanters
- (ii) 843239 – Other

12. The subdivision reflects the increasing practice of no-till farming, which is an agricultural technique that increases the amount of water that infiltrates into the soil and increases organic matter retention.² This technique and the equipment it utilises increases the efficiency of farming, particularly improving the time necessary spent sowing. No-till farming requires specialized seeding equipment which differs from tilling equipment, such as plows.³ The value of no-till equipment varies, including the US\$55,300 for a 20ft John Deere no-till seeder 1590 series (also known as drill), and a John Deere no-till planter 1705 series of eight rows (which is the average size of a no-till planter sold in Arizona) that can be purchased for US\$100,000. The difference between a seeder and a planter lies in the precision with which they operate, the latter being the more precise.

(iii) *2017 amendment effect on HS code 843240*

13. Similar to HS code 843230 above, the 2017 edition has also subdivided HS code 843240 into two separate codes: The 2017 edition has subdivided HS code 843240 into two separate HS codes:

- (i) 843241 – Manure spreaders
- (ii) 843242 – Fertiliser distributors

² See https://en.wikipedia.org/wiki/No-till_farming. See further [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/agdex3483](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/agdex3483).

³ For some examples of tillage equipment see <http://www.caseih.com/northamerica/en-us/products/tillage>.

14. This amendment reflects the increased trade in fertiliser distributors and manure spreaders, which were previously covered in the 2012 edition by the same HS code but in the 2017 each have their own separate code. Fertiliser distributors evenly spread synthetic fertilizer or other synthetic solid inputs over the soil. Manure spreaders distribute manure (dung) or a recycling of plant nutrients from “animal waste” over a field. HS code 843242 also applies to portable injectors for forcing fertilising liquids into the soil. They consist of a long hollow rod, through which the fertiliser is pumped into the soil by a pump.

(iv) *2017 amendment effect on HS code 870190*

15. HS code 870190 has been split into five separate 6-digit HS codes based on the power of the engine installed in the tractor.

16. 8701 – Tractors – Other, of an engine power:

- (i) 870191 - Not exceeding 18 kW
- (ii) 870192 - Exceeding 18 kW but not exceeding 37 kW
- (iii) 870193 - Exceeding 37 kW but not exceeding 75 kW
- (iv) 870194 - Exceeding 75 kW but not exceeding 130 kW
- (v) 870195 - Exceeding 130 kW

17. The prices for the tractors that fall under the five HS codes vary quite significantly. For instance, a John Deere tractor with a 438 kW engine costs over USD\$600,000.⁴ The base price for a John Deere tractor with a 130 kW engine is USD\$160,000.⁵ Tractors with lower engine powers would be expected to cost less than this.

Application of the Article XXXII amendment procedures

18. The 2017 revision of the HS System provides a useful opportunity to hypothetically apply the amendment procedures contained in Article XXXII of the preliminary draft MAC Protocol, as formulated and agreed to by the Committee at CGE1 (Rome, March 2017).

19. The operation of Article XXXII is described in some detail at paragraphs 140 – 148 of [UNIDROIT 2017 – Study 72K – CGE2 – Doc. 3](#). Article XXXII paragraphs 4 and 5 provide two special amendment procedures for amending the Annexes to the MAC Protocol. Paragraph 4 provides a procedure for making amendments to the Annexes to reflect changes to the HS system that have a substantive effect on HS codes listed in the Annexes, or to add new codes covering uniquely identifiable high value mobile equipment used in the agricultural, mining or construction sectors. Paragraph 5 provides a more streamlined procedure for making amendments to the Annexes to reflect technical changes to the HS System that have not affected the scope of the Annexes.

20. The Article XXXII amendment procedures appear to neatly apply to the four HS codes currently contained in the Annexes to the preliminary draft MAC Protocol:

⁴ See http://www.deere.com/en_US/products/equipment/tractors/row_crop_tractors/8r_8rt_series/8r_8rt_series.page?#JDIEXP-8R.

⁵ See https://configure.deere.com/cbyo/#/en_us/configure/9116920.

- (i) **HS code 842481:** As a mere numerical amendment with no substantive effect on the scope of the Protocol, potential amendments concerning this HS code would be considered under paragraph 5.
- (ii) **HS code 843230:** As an amendment that has the potential to affect the scope of the Protocol, potential amendments concerning this HS code would be considered under paragraph 4.
- (iii) **HS code 843240:** As an amendment that has the potential to affect the scope of the Protocol, potential amendments concerning this HS code would be considered under paragraph 4.
- (iv) **HS code 870190:** As an amendment that has the potential to affect the scope of the Protocol, potential amendments concerning this HS code would be considered under paragraph 4.