

Technology to Customs: Catch me, if you can

Omer Wagner



Abstract: *The WTO and the WCO are probably two of the most important players in the international trade sector. They are engaged in conventions designated to facilitate the international trade. The HS convention wishes to set rules for customs classification. The ITA goal is to enhance the duty free treatment of technological products. Occasionally, a frontal dispute between the two conventions occur, when classification of alleged ITA products is appealed, as was happened in Israel also in 2021, concerning STB. While the worldwide trend is to innovate and create new technological products, and the ITA purpose is to encourage using such products, it seems that too many obstacles for this goal exist, while the main one, perhaps, is the customs classification disputes. Possible solutions for reducing classification disputes, may be developing softwares and applications to help classify goods automatically, and not by a human being. Alternatively, having more recent updating of the ITA, once every year (for products descriptions), and coordinate these updates with the HS updates. The world of technology products is changing in a rapid speed. If the ITA wishes to survive in this era, it must make adaptations; otherwise, it may stay behind and become irrelevant.*

Keywords: *WTO, WCO, ITA, Technology, STB, Customs, Classification, HS*

I. INTRODUCTION

The World Trade Organization (WTO) and the World Customs Organization (WCO) are probably two of the most important players, acting in the international trade sector. Those organizations are doing their best effort to facilitate imports, exports, and related issues, among others, by conducting international conventions. The WCO Harmonized System convention (HS), it may be argued, is probably one the most successful international convention, which is implemented in over than 180 states worldwide, and desires to harmonize the tariff codes of goods worldwide [1]. This HS conventions divides goods into Sections, Chapters (2 first digits), Headings (4 digit code) and Subheadings (6 digits), and tries to implement a single language and rules in order to classify goods [2]. For example, HS code 84.71-71, a Subheading level (of chapter 84, Heading 84.71) relates to "Storage units", i.e. computer's hard disks, in every member state which implements the convention. Classification of goods for customs purposes affects the tax rates that will or will not be imposed on them, as well as issues related to compliance issues, such as required government approvals, statistic needs, free trade agreements issues, and so on.

Even though products are changing in a rapid pace, new products are created, old ones disappearing; the HS is updated only once every five years. Nevertheless, the will to harmonize classification is not perfect, classifying goods is not an easy task, and even states who are members of the same conventions, may classify goods differently.

The WTO has also successful conventions, among others, is the Information Technology Agreement of 1996 (ITA), which desires to enhance the trade in technology products, by eliminating customs duties on selected and defined products. Contrary to the HS, which is updated every five years, the ITA was amended only once, in 2015, since it was first signed, back in the previous century.

As anyone can observe, the interests of the HS and the ITA are not identical. While the HS wishes to set rules for classification, regardless whether the outcome leads to duty or duty-free treatment, the ITA goal is the duty free treatment on technologic products. These reasons have caused and probably will continue to cause problems related to classifying information technology products according to the HS.

Thus, in June 2021, The State of Israel has joined the notorious club of states, which allegedly breached the ITA in classifying goods. The Israeli District Court had to rule on proper customs HS classification code of a device called Set Top Box (STB), in Hot-Telecom vs. Customs Authority, case no. 2670-08-15 (hereinafter: "**The Israeli STB case**"). One of the main arguments which led the court to ruling in favour of the plaintiff (the importer), was the reliance on the WTO ITA, which, according to the judgement, forbad from imposing duties on this device, wherever is it to be classified. This judgement is another good example of the existing pendulum between the two successful conventions, the HS and the ITA.

II. THE ITA

A. What is the ITA [3]?

However, before diving into the case's details, a brief explanation about the ITA will be given, herein.

The WTO was founded in 1995. Most of the countries are members of the WTO. The ITA is one of the agreements of the WTO, signed in 1996 and expanded in 2015.

The ITA applies to technological products and aims to encourage their use, by granting exemption from similar customs duties or import taxes, in the trade of these products, between the approving countries.

B. Which Countries Have Signed the ITA?

In 1996, the ITA was signed by 29 countries (the EU was then counted as one country).

Today, in 2024, 82 countries have signed the ITA, with the volume of trade in technology products between them accounting for 97% of trade in technology products worldwide, including Australia, Canada,

Manuscript received on 20 July 2024 | Revised Manuscript received on 21 October 2024 | Manuscript Accepted on 15 November 2024 | Manuscript published on 30 November 2024.

*Correspondence Author(s)

Omer Wagner*, L.L.B., Department of Law, Bar Ilan University, Ramat Gan (Israel), Middle East. Email ID: omerwagner@gmail.com, ORCID ID: [0000-0002-4588-9064](https://orcid.org/0000-0002-4588-9064)

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China, EU countries, India, Israel, Japan, Korea, Russia, Singapore, Thailand, Turkey, UAE, USA, and Vietnam. When a technology product is transferred between two countries that have both signed the agreement, the product is granted an exemption from customs duties.

C. Which Notable Countries are not Signatories to the ITA?

The most prominent countries, which are not signatories to the ITA, are Mexico, Brazil, South Africa, Argentina, Chile and Tunisia. That is, when a technology product is transferred between two parties, at least one of which is not a signatory to the ITA, the ITA does not apply.

D. In Short: to What Technological Products Does the Agreement Apply?

The agreement applies to technological products and divides them into groups.

The agreement includes two appendices: Attachment A, which contains a list of products with the international customs classification code (at the level of 4 or 6 digits), and Attachment B, which contains a technical description of products, without their customs classification.

With respect to Attachment A, the States Parties to the Agreement undertake not to charge customs duties on the products according to their specific classification.

A few examples of products included in Attachment A, are:

| HS code | Description |
|------------|-------------------------------|
| 84.70-5000 | Cash registers |
| 84.71 | Computers of various types |
| 85.18-1000 | Microphones of certain types |
| 85.23-2000 | Magnetic medium |
| 85.44-7000 | Fiber optic cables |
| 90.26 | Various measuring instruments |

With respect to Attachment B, the States Parties to the ITA have undertaken not to charge customs duties on the products corresponding to the technical description, whatever their classification may be, regardless of whether they are included in Attachment A or not.

Examples of products included in Attachment B, which should be exempted from customs duties regardless of their classification, are:

Computers and their parts, storage drives, monitors and monitors used in technological products, wireless and wired network equipment, DVD drives, and pager devices. Moreover, the product that came up for discussion in the recent Israel court judgement, the STB, defined in the ITA, as:

"Set top boxes which have a communication function: a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange".

E. Expansion of the ITA in 2015

The agreement was first signed in 1996, and as is well known, since then technology has evolved and new products have entered the market.

Between 1996 and 2015, many voices were heard, calling for the ITA expansion due to the technological changes and the old definitions that were apparently unsuitable, more products description were needed [4].

The member states of the agreement were aware of this criticism, and in 2015, an extension was made to the agreement, which included additional products under the agreement [5].

The ITA extension, sometimes called "ITA II", required all countries not to charge customs duties for the additional products included in it. The expansion was to be implemented with a partial reduction of duties every year, until the final elimination.

The expansion relates to both attachments A (specific classification HS codes) and B (product description) of the original ITA.

Products included under the extension include, among others: electronic equipment such as video cameras, game consoles, DVD players, integrated printers, medical equipment such as imaging devices, headphones, microphones and speakers, satellite equipment, semiconductors.

It should be noted, that the ITA expansion included also a product classified under Subheading 85.28-71 to the HS, which relate to TV converters, and its description is as follows:

| Attachment | No. | HS Code | Description |
|------------|-----|---------|---|
| A | 93 | 852871 | Not designed to incorporate a video display or screen |

This classification HS code, and its alleged conjunction with the definition of STB in the original ITA (1996), was also discussed in the recent Israeli court judgement, as will be elaborated, herein.

F. Does the ITA apply only to Customs Duties, or Does it Prohibit the Imposition of Additional Taxes?

The basic rule of the ITA prohibits States Parties from imposing customs duties on information technology products.

But the ITA goes beyond that and forbids also imposing "Taxes or levies of any kind", in the form set out below in section 2 of the ITA (1996), and section no. 1 of the ITA expansion (2015):

"Each party shall bind and eliminate customs duties and other duties and charges of any kind, within the meaning of Article II: 1 (b) of the General Agreement on Tariffs and Trade 1994...".

The question what are these additional taxes or levies, is not a simple to answer, and this claim was discussed in the Israeli recent dispute, as will be detailed.

III. THE ISRAELI STB CASE (2021)

A. What Were the Products Under Discussion?

For many years, the Israeli consumers have used television converters (TV tuners) for the reception of TV broadcasts, whether was it for cable, satellite or terrestrial. Aside from this, consumers have used separate devices to surf the internet, such as internet modems and routers, and a separate apparatus to speak over the home phone (Telephone modem). Due to a technological progress, in recent years, new devices were introduced, which combined, for the first time in Israel, under one assembly, the ability to receive cable TV broadcasts, home Internet connection,

wireless Internet router, which allows surfing with all devices at home (cellular phone, tablet), and modem for phone calls.

In fact, all the previous assemblies, which were marketed separately, became marketed under one assembly, one smart box.

B. The Classification Claims

The Israeli Customs Authority argued for classification in the "traditional" Subheading in which cable TV converters were classified, which is HS code 85.28-71, relates in short to **reception apparatus for television**, or in other words, **TV converter**:

Section XVI: Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles.

Chapter 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

Heading 85.28 (4 digit level): Monitors and projectors, not incorporating television, reception apparatus; reception apparatus for television whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus

Subheading 85.28-7000: Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video-: recording or reproducing apparatus

Subheading 85.28-7100 (6 digit level): Not designed to incorporate a video display or screen.

Imports of goods under the Israeli specific HS code 85.28-7140 (8 digit level – refers to: Others, special for reception from satellite or from terrestrial cables) were subjected, until the end of year 2017, to pay customs duty or purchase tax at a rate of 10% of the goods value (ad valorem).

The importer argued for classification in HS code 85.17-62, which relates, in short to **apparatus for transmission or reception of voice, images or data** or on other words: **communication device**.

It appears that Section XVI and Chapter 85 to the HS were agreed between the parties, and the discussion was about the Heading level (4 digits), between HS codes 85.17 to 85.28.

Subheading 85.17-62 relates to:

Heading 85.17: Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the, transmission or reception of voice, images or other data including apparatus for communication in a wired or wireless network (such as a local or wide area network) other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28.

Subheading 85.17-6000: Other apparatus, for transmission or reception of voice images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network).

Subheading 85.17-6200: -Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.

Imports of goods under the Israeli specific HS code 85.17-6290 (8 digit level – refers to: Others) were exempted from customs duty and purchase tax.

C. The Court Ruling Concerning the HS Classification

There was no dispute between the parties that the device allows, under one assembly, several functions: reception apparatus for TV broadcasting (of HS code 85.28), Internet connection, Telephone (both of HS code 85.17), so the court needed to rule what is the principal function of the device, under Rule no. 3 of section 16 (XVI) of the HS.

The court, after legal proceedings, which lasted, more than five years, ruled in favor of the importer. It was proved that the main function wasn't the television reception of HS code 85.28, but the communication, internet functions, of HS code 85.17.

However, the more interesting issue was the court reliance on the ITA, as an interpretative assist for the customs determination.

D. Has the State of Israel Violated the ITA, by Imposing Import Duties on the STB?

The Court accepted the importer's additional claim, that the State of Israel allegedly violated an international convention - the ITA, which prohibited the imposition of customs duties or equivalent duties, on communications products, such as the STB in issue.

It has been proven to the Court, that one of the products that was banned from imposing a customs duty was called STB – a set top box with a communication function: a type of device based on a processor that has a communication function, which combines a modem that allows access to the Internet and an information exchange function.

The customs authority claimed that the products under examination is different so the ITA does not apply to it. Among others, the customs authority relied on a WCO decision from 2006 which classified STB in HS code 85.28-71.

The customs authority further claimed, that the ITA expansion of 2015 related in Attachment A to a product classified under HS code 85.28-71, and allowed a gradual decrease of duty within few years.

The court rejected these claims and ruled that the WCO decision is irrelevant since the STB in issue is far more advanced product.

The court also ruled that the product under consideration falls under the broad definition of STB in the original ITA, even if the product is far more advanced. The additional claim for allowing the imposition of duties, under the ITA expansion, to a product classified in HS code 85.28-71 was denied, since this classification itself was rejected by the court.

It was further proved to the Court that when the State of Israel signed this ITA convention, it has declared before the WTO that the same STB was classified in Israel in HS code 85.17 or 85.43, when both, at the time, were exempt from customs duties and purchase tax.

Therefore, the Court criticized the conduct of the State of Israel, stating in section 20 of the judgement:

"Therefore, in one hand the State of Israel through the Ministry of Economy, has exempted from customs duty Subheadings 85.17-5000 and 85.43-8990 in which, according to its statement to the WTO,

the STB device was classified, and in the other hand, the State of Israel, through the Tax Authority claims a different classification to STB, in Subheading 85.28-7140 which is subjected to import duties, thereby "bypassing" the HS codes or descriptions which defined as exempted, under the ITA".

The Israel Customs Authority argued that the International Convention, the ITA, applied only to customs duties, while in those years, the converters were charged mainly with a purchase tax, a local Israeli tax, which is not applicable, when dealing with the ITA.

The Court rejected this claim and accepted the importer's claim, that since there was no domestic production of television converters in Israel, de-facto, the purchase tax acted as a custom duty (or equivalent duty), imposed only on imports, and the court even named it as "customs duties under disguise" / "customs duty with a mask".

Therefore, it was ruled that the international convention, the ITA, prohibited the imposition of such a purchase tax, as well. Therefore, the court rejected the State of Israel's claims concerning the ITA and ruled that the STB under consideration cannot be classified, in any case, under HS code 85.28-71 to the HS, which is subjected to import duties. That is, since such a classification is apparently a breach of Israel's obligations under the ITA.

IV. DISCUSSION

A. International Treaty Obligations May Affect and Overrule Customs Classification Rules

In a typical customs lawsuit, the parties usually raise claims from the field of customs law, including one classification over another, sections or chapters HS rules, explanations of a customs HS codes according to the WCO explanatory notes, classification decisions given by foreign customs authorities, and so on [6].

In the recent Israeli STB case, the importer had raised an argument that goes beyond what is common in customs claims, and that is that the State of Israel's obligation in the ITA does not allow the imposition of an import tax on the product, whatever its classification is for customs purposes.

A similar argument was raised in many more jurisdictions outside Israel, so Israel was off course not the first state to rule the customs classification HS code, of an alleged ITA covered product.

In the most famous ITA related case, the WTO dispute settlement body (DSB) in 2010 had discussed USA, Japan and Taiwan complaint, according to which, the European Union had violated the ITA, by imposing duties on several products, among others, flat panel displays, multifunctional digital machines, and several types of **cable and satellite STB** [7].

The STB at issue in the dispute, were STB with an ethernet Modem, and STB with recording and reproducing function (with hard drive or DVD drive).

The EU customs tariff code (TARIC) contained Subheading 85.28-7113, exempted from duties, and related to:

"Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals (set-top boxes with

communication function)".

But it was claimed that the EU decided to classify these two types of STB's differently, and to exclude it from the duty-free treatment according to the ITA, so it was subjected to about 14% duties.

The WTO, in a very comprehensive report, analyzed the ITA and its effect on customs classification of STB, and found that the EU had breached the ITA in imposing duties on the STB. The Panel came to that conclusion even if the STB at issue had more functions than the original STB mentioned in the ITA.

The effect of an external treaty on customs classification, may be argued, is similar to a contention raised from time to time in customs claims in Israel, which is called "the law's purpose".

Hence, in many Israeli court judgements, where the court was uncertain which HS code is more appropriate for the product at issue, he resolved the issue according to the question, whether he believes that the legislator meant to charge or to exempt the product from duties.

For example, in Israeli judgment from 2011, concerning classification of a product named Rescue Remedy (plants extract with alcohol, used for relaxation), file no. 7057-05, Pharma Guri Vs. Customs authority, the Court ruled that there is no point in imposing purchase tax on the product, even though it contains alcohol, because the product lacks a negative effect on the public interest. In other words, it was ruled that the product is not similar to alcoholic beverage, which the State of Israel is interested in decreasing the consumption. Therefore, the product was classified in Heading 21.06 of the HS (food preparations..) and not 22.08 (Alcoholic beverages).

In Israeli Judgment from 2015 concerning classification of pulse sports watches, file no. 3925-09-10, Agentech vs. Customs authority, the Court ruled that there is no purpose to impose customs duty on a product intended for athletes and encourages health. Therefore, the product was classified in Subheading 90.31-8020 of the Israeli HS code (measuring or checking instruments. whose operation is based on a variable electrical phenomenon...) and not 90.31-8090 (others).

It can be seen that the Court in the recent Israeli STB case, agreed to march alongside the importer claim, and ruled that the Israeli Customs Authority allegedly violated the international convention, the ITA, in imposing a tax on the STB. Even though the STB definition of the ITA was quite old (1996) and was not amended in the ITA expansion (of 2015), so for sure the product at issue was far more advanced than the original ITA's STB, the court made a wide interpretation and ruled that the ITA relates to this product at issue, as well. This is because the court found the law's purpose was to exempt this product from duties. It should be noted that the State of Israel, which is a member of the original ITA and its expansion, even published a guide to ITA in its official websites, in which it is declared its commitment to the ITA: "The State of Israel is a member of this agreement since 1997, and the agreement contributes significantly to the liberalization, in eliminating customs duties on selected technological products, especially where the IT is one of the leading and emerging sectors in Israel".

Therefore, it can only be assumed, that if at the classification stage, the Court decided to classify the device in HS code 85.28-71 According to the Israeli Customs Authority claim, then the Court would have had no choice but to invalidate this classification, due to a violation of the International Convention, the ITA.

In that case, a complaint against the State of Israel to the WTO, for violating the ITA, would have been a possible outcome.

B. A Wide Interpretation of "Other Duties and Charges of Any Kind".

As mentioned, the ITA and its expansion forbid imposing duties and other charges of any kind, on the technological products covered by the agreement.

The "other duties and charges of any kind" which the ITA forbids, are defined in GATT agreement [8]. These are basically, domestic taxes, which are equivalent to customs duties by its nature, etc.

The question of what would be considered a "customs-equivalent levy" that should not be levied is not simple.

For example, Israel imposes purchase tax on vehicles. Although, in principle, this tax is imposed equally on imports or on local manufacture and sale of products, in practice, there is no local production of vehicles in Israel. Therefore, it is imposed de-facto only on imports, so there is a point in claiming that this tax is a customs equivalent levy [9].

For comparison, in one of the cases from 2011, the WTO panel discussed whether Philippines excise duty regime on alcoholic beverages was a breach of the GATT agreement. Philippines divided alcoholic beverages according to the raw materials. Beverages manufactured from coconut, cassava (tropical plant), palm or sugarcane, were subjected to a low duty, while other beverages, were subjected to higher duty. The WTO panel concluded that since the majority of beverages with the lower duty, are made in Philippines, then the higher duty is imposed mainly on imported products, therefore it is a breach of the GATT agreement [10].

It should be noted that even in the recent ruling in Israeli STB case, the Court ruled that since in those years, there was no Israeli local production of goods similar to this STB, then the purchase tax, an Israeli domestic tax, imposed was a kind of levy equivalent to customs, which is prohibited under the ITA. This wide interpretation of "duties of any kind" goes alongside with similar decisions of the WTO.

C. The Legislator is Chasing Technology

No doubt, that the Israeli recent STB is another case in which technology is advancing faster than the customs legislator is, whether is it the HS legislator (which is updated every five years) or the ITA legislator (which was updated once every 20 years, so far).

Just as in the past, printers, scanners, fax machines were used separately, and at some point, integrated devices began to arrive, which posed a challenge in defining the device for customs purposes, so is the Israeli STB case.

TV converters have been classified for years under HS code 85.28 on its sub-classifications, depending on the specification of the device.

On the other hand, communication devices such as modem, router, including telephony, were classified HS code 85.17.

When it first arrived, a device that combines, under one assembly, both the TV functions of HS code 85.28 and the Internet functions of HS code 85.17, the importer and the Israeli Customs Authority had trouble defining this product, as the technology ran faster than the customs legislator did.

The dilemma of defining a technological product when the technology is changing in a rapid pace rings the bell of two Israeli Supreme Court decisions, related to this issue.

In one of the famous Israeli Supreme Court Judgements, back in 2001, file no. 655/99 Eurocom Vs. Customs authority, the court had to classify a cellular battery. The Israeli customs authority claimed for classification in HS code 85.07-30, which related to: "Electronic Accumulators. Nickel-cadmium", and in simple words: "**Batteries**". The importer claimed for classification in HS code 85.29-90, which related to: "Parts suitable for use solely or principally with the apparatus of headings 85.24 to 85.28", and in simple words: "**Cellular phones parts**".

The judge needed to rule, which description is more specific, since it was undisputable that the goods are both batteries and parts of cellular phones, therefore, theoretically, may be classified in both HS codes.

The judge ruled in favor of "A cellular phone part", not before he compared customs classification to the Jewish Biblical story, and noted that:

"Classification of goods is hard as the Crossing of the Red Sea" [11].

In another Israeli Court decision more than 20 years ago (2001), file no. 16/2001, Shas vs. Deputy chairman of election commission, the court discussed whether, under the Israeli law, elections propaganda through an internet chat is forbidden or not. The court concluded that it would be allowed, not before defining in a pictorial language, the changes brought about by the computer and Internet era, and compared technological advances to horsepower movement in chessboard:

"..The computer - and with it the internet - are nothing but a mutation of previous life forms that we knew and that we domesticated in the legal system. Those are new life, and their movement is not as we were used to live with. Their movement is like the horse in the chess game. Not completely forward; not entirely backward; not entirely to the side; not entirely diagonally; a move is a little of this and a little of that.. Nevertheless, this new type of mutation differs from the horse in chess, since we can already know which movement is allowed for horse, so we can estimate – more or less- how to defend ourselves from the horse attacking us; While these new life forms of the computer and the Internet have not yet been explored, we have not yet reached the bottom of the pit.

One click in Jerusalem, and you are in Tel Aviv; Another click, and you are in Australia; Third click- The system makes a rebel and all is erased as was never here. We were starting to move at the speed of light while our bodies are in the carriage and the flow of our thoughts is like the speed of the carriage."

These things were written about 20 years ago, and seem to be relevant today as well. As stated, from 1996 to 2015, a long period of almost 20 years, the ITA was updated only once, and the products to which the agreement shall apply were expanded.

The WTO has published a comprehensive review every few years, celebrating the ITA [12], but the official expansion took place about 20 years from the original ITA. The frequent technological progress makes it is needless to say that the expansion was blessed and worthy [13].

Saying that, one does not have to be a prophet, in order to estimate that from 2015 until today, there is already a need to update the ITA and introduce new products in it. Furthermore, this need will only increase over the years, as we are witnessing the development of new technology and multipurpose products, more frequently. The discussion for another expansion (ITA III) had already begun.

V. CONCLUSIONS AND FUTURE RECOMMENDATIONS

It is indisputable, among the ITA members, that this agreement is very important. The ITA has many advantages, it encourages growth, it can make a change for developed countries economies, any much more [14].

However, in 2024, the ITA still suffers from different problems;

- A. The ITA is inapplicable for non-WTO member states.
- B. The ITA is inapplicable for WTO member states who are not ITA members.
- C. The ITA is partially inapplicable for WTO member states who are members of the ITA but are not members of the ITA expansion, ITA II [15].
- D. The ITA is updated in a very low frequency (only once in 20 years), the technology is running faster than the legislator is.
- E. The HS classification codes, which are the basic for the ITA, are updated only once every 5 years.
- F. And if that was not enough, even if we are dealing with two WTO and ITA member states, including the ITA expansion, customs classification disputes may still be a big obstacle to achieving the ITA's purpose.

While the solution for adding more member states to the WTO or the ITA may be complicated and take a long time, it seems that a solution for ITA products classification disputes, may come more in handy.

As we have encountered, A STB may be classified in Israel in HS code 85.17 and a similar product will be classified differently elsewhere. In the recent years, many STB classification disputes were discussed, which makes the STB a bone of contention within the ITA's products [16].

For example, in 2004, an Indian in C-Net Communications (I) Pvt. vs Commr. Of Cus., court ruled that STB will be classified in HS code 85.17 and not 85.28, in order to comply with India's commitments under the ITA.

In 2011, an EU court in C-288/09, C-289/09, British sky broadcasting group vs. The Commissioners for Her Majesty's Revenue & Customs, ruled that STB equipped with recording feature is classified in HS code 85.28, which complies with the EU commitments under the ITA.

In 2014, Pakistan in Case no. (640)KAPE –ADC (I)/2014 classified smart tv STB in HS code 85.28 while HS code 85.17 was rejected.

These disputes may deal mainly with products which are located in Attachment B of the ITA, which includes a narrative description of the products, without mentioning the potential customs HS classification.

It seems that the problems occur when an original ITA product is upgraded or combined with another product, which makes it a multipurpose product, used not only for the original ITA purpose.

Then, the question which need to be discussed is whether the ITA refers to such a product, or maybe the product has changed dramatically so there is no justification to include it under the ITA definitions, anymore [17].

It may be estimated that as long as the ITA problems mentioned above will not be changed, we shall witness further ITA's alleged products classification disputes, also at the local States' jurisdictions, and also on the global WTO level, like the recent WTO decision concerning India [18].

While the worldwide trend is to innovate and create new technological products, and the ITA purpose is to encourage using such products, it seems that too many obstacles for this goal exist, while the main one, perhaps, is the customs classification disputes.

One possible solution for reducing classification disputes may be developing softwares and applications, as was started in recent years, to help classify goods automatically, and not by a human being [19]. This solution may be insufficient, since in the end of the day, classification is still a field where the computer cannot replace the human being.

Another possible solution may be to have more recent updating of the ITA, once every year (for products descriptions), and coordinate these updates with the HS updates. The world of technology products is changing in a rapid speed. A product, which is today a bestseller, may tomorrow disappear. A product, which is today used for one purpose, may be tomorrow upgraded for three additional purposes.

If the ITA wishes to survive in this era, it must make adaptations; otherwise, it may stay behind and become irrelevant.

DECLARATION STATEMENT

I must verify the accuracy of the following information as the article's author.

- **Conflicts of Interest/ Competing Interests:** Based on my understanding, this article has no conflicts of interest.
- **Funding Support:** This article has not been sponsored or funded by any organization or agency. The independence of this research is a crucial factor in affirming its impartiality, as it has been conducted without any external sway.
- **Ethical Approval and Consent to Participate:** The data provided in this article is exempt from the requirement for ethical approval or participant consent.
- **Data Access Statement and Material Availability:** The adequate resources of this article are publicly accessible.
- **Authors Contributions:** The authorship of this article is contributed solely.

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- Carsten Weerth, Basic Principles of Customs Classification under the Harmonized System, Global Trade and Customs Journal, Volume 3, Issue 2, page 61-67 (2008). <https://doi.org/10.54648/gtcj2008007>
- Carsten Weerth, Harmonized System: Nomenclature Evolution at Its 20th Anniversary (1988–2008), Global Trade and Customs Journal, Volume 3, Issue 7/8, page 275 (2008). <https://doi.org/10.54648/gtcj2008037>
- Carsten Weerth, Harmonized System in Developing Countries, Global Trade and Customs Journal, Volume 3, Issue 11/12, page 379 (2008). <https://doi.org/10.54648/gtcj2008049>
- Carsten Weerth, HS2002- HS2017: Notes of the Tariff nomenclature and the additional notes of the EU revisited, World Customs Journal, Volume 11, Number 1, page 49 (March 2017). <https://doi.org/10.55596/001c.115484>
2. Carsten Weerth, Structure of Customs Tariffs Worldwide and in the European Union, Global Trade and Customs Journal, Volume 3, Issue 6, page 221 (2008). <https://doi.org/10.54648/GTCJ2008030>
See also an explanation about the HS, within a WTO dispute settlement body's decision: "The preamble of the HS Convention sets out the objectives of the HS including "to facilitate international trade", "to facilitate the collection, comparison and analysis of statistics", "to reduce the expense incurred by re-describing, reclassifying and recoding goods as they move from one classification system to another in the course of international trade", and "to facilitate the standardisation of trade documentation and the transmission of data. The HS Convention aims to achieve these objectives through the HS, which establishes an international standard for product nomenclature for more than 5,000 commodity groups, and includes approximately 1,200 headings that are grouped into 21 sections comprising 99 chapters". Page 35, paragraph 7.32 to the WTO Panel report – European Communities and its member States – Tariff treatment of certain information technology products (16.8.10)- WT/DS375/R, WT/DS376/R, WT/DS377/R. <https://doi.org/10.30875/a23b2ce6-en>
 3. World Trade Organization: Agreement on the Implementation of the Ministerial Declaration on Trade in Information Technology Products. <https://doi.org/10.1017/S0020782900019549>
WTO, The road to the Information Technology Agreement. <https://doi.org/10.30875/2636c9db-en>
 4. Portugal-Perez, Alberto, Reyes, Jose-Daniel, Wilson, John S. Beyond the Information Technology Agreement: Harmonisation of Standards and Trade in Electronics, World Economy 33:1870-1897 (2010). <https://doi.org/10.1111/j.1467-9701.2010.01300.x>
The authors mentioned that the trade in information technology is rising, but they are calling to expand the agreement.
 5. WTO, ITA expansion. <https://doi.org/10.30875/ce99614b-en>
 6. See also: "Pursuant to Article 3.1(a)(ii) of the HS Convention, each contracting party also undertakes to apply the "General Rules for the Interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and that it shall not modify the scope of the Sections, Chapters, headings or subheadings of the HS". Under Article 7(1)(b) of the HS Convention, the HS Committee prepares HS Explanatory Notes (HSEN), classification opinions and other advice as guidance to secure uniformity in the interpretation of the HS. The HSEN provide guidance for interpreting the terms of a specific HS heading. Classification opinions are opinions of the HS Committee regarding the customs classification of a specific product." page 68, paragraphs 7.34-7.35 to the WTO Panel report – European Communities and its member States- Tariff treatment of certain information technology products (16.8.10)- WT/DS375/R, WT/DS376/R, WT/DS377/R. <https://doi.org/10.30875/a23b2ce6-en>
 7. The WTO Panel report – European Communities and its member States – Tariff treatment of certain information technology products (16.8.10)- WT/DS375/R, WT/DS376/R, WT/DS377/R <https://doi.org/10.30875/a23b2ce6-en>
The STB Issue is discussed from page 262 paragraph 7.764 to the decision. For example, the Panel ruled that a STB can have many functions and the communication function may not be its primary (paragraph 7.861): "Accordingly, based on our preliminary assessment of the terms "set top boxes which have a communication function", we conclude that the terms "which have" in isolation do not necessarily limit the breadth of coverage of the concession to set top boxes which only have a communication function. However, we also find that the coverage of the concession was not intended to extend to devices which have set top boxes incorporated into them along with other functions in a way that they may no longer be described as, in essence, a "set top box which ha[s] a communication function". In other words, we determined that the concession covers set top boxes which have a communication function, but not necessarily only a communication function. In addition, the Panel notes that while "which have" does not necessarily imply an exclusive functionality, it is clear that the drafters chose to emphasize functionality, and a communication function in particular, in defining this narrative product description."
Many articles have been written about the WTO decision:
Filip Tack, 'Caught by the ITA? From Inception to Current Dilemmas – The EU's Angle', (2010), 5, Global Trade and Customs Journal, Issue 2, pp. 57-69. <https://doi.org/10.54648/gtcj2010006>
The author discusses the relationship and the tension between the EU and the implementation of the ITA agreement.
Tsai-Yu Lin, 'Systemic Reflection on the EC-IT Product Case: Establishing an 'Understanding' on Maintaining the Product Coverage of the Current Information Technology Agreement in the Face of Techn', (2011), 45, Journal of World Trade, Issue 2, pp. 401-430. <https://doi.org/10.54648/trad2011014>
The author discuss the WTO decision and claim the this case: "...has opened up Pandora's box: would original ITA products, after technological change, still be included in the ITA?". The author claim that the WTO dispute settlement body isn't the suitable jurisdiction to resolve these issues.
Davide Rovetta, 'Some Thoughts about European Communities and Its Member States: Tariff Treatment of Certain Information Technology Products', (2011), 6, Global Trade and Customs Journal, Issue 3, pp. 143-148. <https://doi.org/10.54648/gtcj2011020>
The author believes that the WTO decision is quite problematic and makes the legal situation more complex, rather than solving it.
John Grayston, 'The Panel Report on Tariff Treatment of Certain Information Technology Products: Classification Is the Key to Effective Implementation', (2011), 6, Global Trade and Customs Journal, Issue 3, pp. 149-155. <https://doi.org/10.54648/gtcj2011021>
The author claims, for example, that a STB with har drive, apparently, falls under the scope of the ITA, but the EU customs explanatory notes exclude such a product from the exempted classification. The author calls for a revision of classification rules in the EU.
Conconi, P., & Howse, R. (2012). Panel Report on EC–IT Products. World Trade Review, 11(2), 223-255. <https://doi.org/10.1017/S1474745611000504>
The authors claim that the panel's decision and wide interpretation of the products description, helps in achieving the ITA purpose, which is: "...maximum freedom of world trade in information technology products' and 'encourage the continued technological development of the information technology industry on a world-wide basis'."The authors claim that: "In our view, the Panel's ruling helps to achieve this goal, by effectively expanding the list of duty-free products to all newly developed multifunctional products that combine features of products that are in the ITA with features of other products that were left out of the ITA. "Nevertheless, the authors estimate that trade disputes concerning the ITA coverage shall continue.
 8. Article II: Schedules of Concessions, paragraph 1(b) of the General Agreement on Tariffs and Trade (GATT 1947). <https://doi.org/10.1017/cbo9780511818424.007>
"The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date." And is defined in another place – Handbook on Accession to the WTO. <https://doi.org/10.30875/71bba149-en>

Chapter 5, Substance of Accession Negotiations, paragraph 5.2 rules, it is defined: "This section deals with any duties or charges levied on imported goods but not on domestically produced goods, other than charges equivalent to internal taxes, anti-dumping duties, countervailing duties and fees and charges for services rendered (for which, see below). Other duties and charges (ODCs) provide revenue for the government and protection to domestic production and therefore, like customs duties, directly affect access to markets. The WTO provides that if the customs duty on an item is bound in a Member's Schedule, then any other duties and charges on that item are also bound."

9. Nellie Munin, Israeli Purchase Tax on Commercially Imported Cars: An Illegal Barrier to International Trade or a Legitimate Domestic Policy Instrument? *Global trade and customs journal*, Kluwer, Volume 12, Issue 9 (2017), pp. 350-359.
<https://doi.org/10.54648/gtcj2017047>
10. WTO - Panel - Philippines – taxes on distilled spirits, WT/DS396/R, 15.8.2011. <https://doi.org/10.30875/ffff3b70-en>
Appellate body which upheld most of the Panel findings-WT/DS396/AB/R - 21.12.11.
<https://doi.org/10.30875/bceec667-en>
Another example: WTO - Japan – Taxes on Alcoholic Beverages (Panel report, 11.7.96, Appellate Body report, 4.10.96).
<https://doi.org/10.1017/9781108378611.006>
<https://doi.org/10.1017/9781108378611.005>
For comparison, please see the conjunction between the ITA and another WTO agreement, the Technical Barriers to Trade (TBT) agreement-Mahdi Ghodsi, Impact of TBTs on Trade in ICT Goods: Differentiating by Regulatory Objectives, *Central European Economic Journal*, Volume 11 (2024): Issue 58 (January 2024).
<https://doi.org/10.2478/ceej-2024-0009>
11. As to crossing the red sea: In short, the Israelites, led by Moses, have escaped from Egypt, and when came across the red sea, a miracle has happened, so the sea was divided into two parts, the Israelites have escaped between those two sea parts, and the Egyptian have drowned as the sea was gathered into one piece when they crossed, again (The Bible, Exodus, Chapter 14). <https://doi.org/10.5040/9780567701145.ex>
12. The WTO used to publish a comprehensive review of the ITA issues every few years. For example: WTO – 15 years of the Information Technology Agreement- trade, innovation and global production networks (2012). <https://doi.org/10.30875/1bbd6c67-en>
WTO – 20 years of the Information Technology Agreement- boosting trade, innovation and digital connectivity (2017).
<https://doi.org/10.30875/b7183408-en>
It is interesting to note, that STB classification is still disputed between the member states, as noted in Chapter 3, page 57 of this report: Annex Table 3.3: "Attachment B" products with remaining classification divergencies in HS 2007:

| ITA Item No. | Product Description |
|--------------|--|
| 203 | Set top box which have a communication function: a microprocessorbased device incorporating a modem for gaining access to the internet, and having a function of interactive information exchange. |

13. The ITA expansion (sometimes called "ITA II") is discussed in the literature. For example:
Rostam J. Neuwirth, The Information Technology Agreement (ITA), Annex 21 from the book: Richieri Hanania, L. and Norodom, A.-T. (2016) Diversity of Cultural Expressions in The Digital Era, Buenos Aires. <https://doi.org/10.55778/ts096909018>
The author claims that despite the expansion, the ITA will continue to raise customs classification disputes, since the rapid evolving technology.
Winslett, G. (2018). Critical Mass Agreements: The Proven Template for Trade Liberalization in the WTO. *World Trade Review*, 17(3), 405-426. <https://doi.org/10.1017/S1474745617000295>
The author discusses the factors that cause the ITA to expand, and considers what can be learned from the ITA with regard to other international agreements.
14. Bijit Bora and Xuepeng Liu, Evaluating the Impact of the WTO Information Technology Agreement (2008).
https://doi.org/10.1142/9789814299404_0002
The authors present a statistical analysis which shows that when a technological product is being traded, the import volume of such as

product will raise, if the product is bought from an ITA member state. Mann, Catherine & Liu, Xuepeng. (2009). The Information Technology Agreement: Sui Generis or Model Stepping Stone?.

- <https://doi.org/10.1017/CBO9781139162111.008>
- The author claims that the ITA is a huge success, and there is no other customs international agreement which was more successful than the ITA. The author discusses the option of duplicating the ITA in other sectors and comes to a conclusion that it will be impossible.
- Henn, C., & Gnutzmann-Mkrtychyan, A. (2015). The layers of the IT Agreement's trade impact. *Econstor*.
<https://doi.org/10.30875/92CD71F9-EN>
- The authors claim that every ITA member state has gained from the ITA membership, the imports and exports were raised. A statistical analysis is presented.
- Ernst, Dieter, The Information Technology Agreement, Manufacturing and Innovation – China's and India's Contrasting Experiences (February 23, 2016). East-West Center Workshop on Mega-Regionalism - New Challenges for Trade and Innovation.
<https://doi.org/10.2139/ssrn.2737082>
- The author claims that an international agreement which reduces duties on technologic products, may facilitate developing countries to promote innovation.
15. Khanderia, S. (2018). The Information Technology Agreement and the 'Make-in-India' Initiative: Weighing the Better Alternative for India. *Foreign Trade Review*, 53(2), 98–115.
<https://doi.org/10.1177/0015732517734749>
This article describes that India, for example, is a member of the original ITA, but was not member of the ITA expansion, since India had doubts whether the expansion will have a positive or negative influence on the economy. The article discusses whether India's choice was correct or not. It should be also noted, that the WTO panel ruled, that discussions concerning ITA II before it was signed, cannot influence the interpretation of the original ITA (Page 217, paragraph 7.591). the WTO Panel report-European Communities and it member States – Tariff treatment of certain information technology products (16.8.10)- WT/DS375/R, WT/DS376/R, WT/DS377/R.
<https://doi.org/10.30875/a23b2ce6-en>
 16. Sara Nordin, 'CJEU Judgment in BskyB and Pace Cases on Customs Classification of Set-Top Boxes', (2011), 6, *Global Trade and Customs Journal*, Issue 9, pp. 439-442. <https://doi.org/10.54648/gtcj2011053>
 17. For example, the WTO ruled that a technological development which occurs on a product after the ITA, which adds a product another feature, does not preclude the product from being covered under the ITA. An example of multimedia displays which were later equipped with a DVI connector, is given. (Page 219, paragraph 7.600). the WTO Panel report – European Communities and it member States – Tariff treatment of certain information technology products (16.8.10)- WT/DS375/R, WT/DS376/R, WT/DS377/R. <https://doi.org/10.30875/a23b2ce6-en>
 18. WTO disputes for imposing duties on ITA alleged products are still ongoing, some of them were ruled. For example: DS582: India — Tariff Treatment on Certain Goods in the Information and Communications Technology Sector (April, 2023).
<https://doi.org/10.30875/25189832-582>
DS584: India — Tariff Treatment on Certain Goods (2023).
<https://doi.org/10.30875/25189832-584>
DS588: India — Tariff Treatment on Certain Goods in the Information and Communications Technology Sector (2023).
<https://doi.org/10.30875/25189832-588>
 19. Michael Lux et al, Classification of Goods: What are the Hurdles and Pitfalls in the Use of Automation or IT Support? *Global Trade and Customs Journal*, Volume 16, Issue 6, page 237 (2021).
<https://doi.org/10.54648/gtcj2021027>
Liya Ding, ZhenZhen Fan, DongLiang Chen, Auto-Categorization of HS Code Using Background Net Approach, *Procedia Computer Science*, Volume 60, 2015, Pages 1462-1471.
<https://doi.org/10.1016/j.procs.2015.08.224>

AUTHOR PROFILE



Omer Wagner, Adv. and Notary, LL. B in Law, Bar Ilan University, Ramat Gan, Israel. Specializes in customs duty, excise duty, VAT, indirect taxation, import, export, international trade, trade levies, regulation, and litigation in those subjects.

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