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COUNCIL DECISION (EU) 2026/2608

of 9 November 2026

on the position to be taken on behalf of the European Union within the World Customs Organization with regard to a Recommendation concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention and the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the Harmonized System Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31, Article 43(2) and Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By means of Council Decision 87/369/EEC ([1]) the Union approved the International Convention on the Harmonized Commodity Description and Coding System ([2]), and the Protocol of Amendment thereto ([3]) (the 'HS Convention'), which, inter alia, established the Harmonized System Committee (HSC).

(2) Pursuant to Article 7(1), points (a), (b) and (c), of the HS Convention, the HSC's functions are to propose such amendments to the HS Convention as may be considered desirable, having regard, in particular, to the needs of users and to changes in technology or in patterns of international trade, to prepare Explanatory Notes, Classification Opinions or other advice as guides to the interpretation of the Harmonized System and to prepare recommendations to secure uniformity in the interpretation and application of the Harmonized System.

(3) Pursuant to Article 8(1) of the HS Convention, the World Customs Organization (WCO) Council is to examine proposals for amendment of the HS Convention, prepared by the HSC, and recommend them to the Contracting Parties to the HS Convention under the procedure of Article 16 unless any WCO Council Member which is a Contracting Party to the HS Convention requests that the proposals or any part thereof be referred to the HSC for re-examination. The WCO Council recommends amendments of the Nomenclature appended as an Annex to the HS Convention, as a general rule, every five years.

(4) It is appropriate to establish the position to be taken on the Union's behalf within the WCO with regard to a Recommendation concerning the amendment of the Nomenclature appended as an Annex to the HS Convention, since, once accepted in accordance with Article 16 of the HS Convention, such a Recommendation will be binding on the Union under international law and capable of decisively influencing the content of Union law, in particular Annex I to Council Regulation (EEC) No 2658/87 ([4]).

([1]) Council Decision 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonized Commodity Description and Coding System and of the Protocol of Amendment thereto (OJ L 198, 20.7.1987, p. 1, ELI: http://data.europa.eu/eli/dec/1987/369/oj).
([2]) OJ L 198, 20.7.1987, p. 3, ELI: http://data.europa.eu/eli/convention/1987/369/oj.
([3]) OJ L 198, 20.7.1987, p. 11, ELI: http://data.europa.eu/eli/prot/1987/369/oj.
([4]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1, ELI: http://data.europa.eu/eli/reg/1987/2658/oj).

(5) Pursuant to Article 8(3) of the HS Convention, Explanatory Notes, Classification Opinions, other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation and application of the Harmonized System, prepared during a session of the HSC, are to be deemed to be approved by the WCO Council if, as of the end of the second month following the month during which the session at which they were adopted was closed, no Contracting Party to the HS Convention has notified the WCO Secretary-General that it entered a request for re-examination by the HSC or referral to the WCO Council.

(6) Pursuant to Article 8(4) of the HS Convention, where a matter has been referred to the WCO Council under the provisions of paragraph 2 of that Article, the WCO Council is to approve those Explanatory Notes, Classification Opinions, other advice or recommendations, unless any WCO Council Member which is a Contracting Party to the HS Convention requests that they be referred in whole or in part to the HSC for re-examination.

(7) It is appropriate to establish the position to be taken on the Union's behalf in the WCO with regard to the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the HS Convention, as those decisions prepared by the HSC will be capable of decisively influencing the content of Union law, namely, Council Regulation (EEC) No 2658/87.

(8) It is in the interest of the Union that the positions expressed by the Union in the HSC be established according to principles, criteria and orientations governing the tariff classification of goods. It is also in the interest of the Union that those positions be established in an expeditious manner to allow the Union to exercise its rights in the HSC.

(9) To preserve the Union's rights, the Commission should also be able to request on behalf of the Union that a matter be referred to the WCO Council or to the HSC for re-examination pursuant to Article 8(2) of the HS Convention, in order to avoid that a decision is adopted on a matter on which the WCO Council is either unable to reach a position before the expiry of the deadline provided for in Article 8(3) of the HS Convention, or has reached a position which differs in substance from the decision that was adopted by the HSC.

(10) In view of the evolving and highly technical nature of the classification of goods under the HS Convention, the high volume of questions dealt with during the two HSC meetings taking place each year and the short time available to consider documents issued by the WCO Secretariat and Contracting Parties to the HS Convention in preparation for the HSC meetings and the consequent need for the position of the Union to take into account and to effectively act upon the new information presented before or during such meetings, necessary steps should be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on European Union (TEU), for the specification of the position of the Union.

(11) Council Decision (EU) 2023/2898 ([5]) set up an efficient and expedited procedure for the establishment of the position to be taken on the Union's behalf on the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention, and on the preparation of such acts in the WCO. As that Decision will expire on 31 December 2026, it is appropriate to replace it with a new Decision in order to ensure continuity, enhance legal certainty and improve efficiency.

(12) In view of the recurrent late availability of working documents before HSC meetings, and in order to preserve the Union's rights and interests within the WCO, the Commission should strive to call on the WCO Secretariat to ensure the availability of working documents in conformity with the rules of procedure of the HSC, so that such documents are dispatched at least 30 days before the opening of the relevant session.

(13) To ensure that the Council is able to assess and, where appropriate, revise the policy in this Decision on a regular basis, and in the spirit of the sincere cooperation among the Union institutions enshrined in Article 13(2) of the TEU, the validity of this Decision should be limited in time.

(14) In order to maintain a Union position on a WCO Council Recommendation concerning the amendment of the Nomenclature appended as an Annex to the HS Convention adopted pursuant to Article 16 of the HS Convention, and on the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention, and on the preparation of such acts in the WCO after the expiry of Decision (EU) 2023/2898 on 31 December 2026, this Decision should apply from 1 January 2027,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the WCO with regard to a Recommendation concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention and the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System, recommendations to secure uniformity in the interpretation of the Harmonized System under the Harmonized System Convention, and on the preparation of such acts in the WCO, shall be established in accordance with the principles, criteria and orientations laid down in Section I of the Annex to this Decision.

Article 2

The specification of the Union's position to be taken under Article 1 shall be conducted in accordance with Section II of the Annex.

([5]) Council Decision (EU) 2023/2898 of 19 December 2023 on the position to be taken on behalf of the European Union within the World Customs Organization (WCO) with regard to the adoption of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention (OJ L, 2023/2898, 22.12.2023, ELI: http://data.europa.eu/eli/dec/2023/2898/oj).

Article 3

This Decision shall enter into force on the date of its adoption.

It shall apply from 1 January 2027 to 31 December 2032.

Done at Brussels, 9 November 2026.

For the Council

The President

S. HARRIS

ANNEX

I. Position to be taken on behalf of the European Union within the World Customs Organization with regard to a Recommendation concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention, which pursuant Article 2 of that Convention, forms an integral part of it, and the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the Harmonized System Convention.

1. PRINCIPLES

In the framework of the World Customs Organization (WCO), the Union shall:

(a) promote, contribute to and facilitate the customs classification of goods and the uniform interpretation and application of the Harmonized System (HS), and the reduction of the number of cases and disputes concerning divergent interpretations of the HS;

(b) work towards the appropriate involvement of stakeholders in the preparation phase for decisions of the Harmonized System Committee (HSC) and ensure that decisions adopted in the WCO are in accordance with the International Convention on the Harmonized Commodity Description and Coding System (HS Convention) ([1]);

(c) ensure that measures adopted in the WCO are consistent with the general rules for the interpretation of the HS;

(d) promote positions consistent with the best practices developed by the Union in the area concerned;

(e) promote the simplification and modernisation of the HS Nomenclature according to the evolution of the needs of the users and development of new technologies;

(f) ensure coherence with its other policies, including the objective to protect the financial interests of the Union, and international commitments to the extent relevant in light of the specific nature of customs classification.

2. CRITERIA

The positions to be taken on the Union's behalf in the WCO:

(a) shall be established according to the following general criteria:

— the principle that, in the interest of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant headings of the HS and in the Section or Chapter notes, and

([1]) Council Decision 87/369/EEC of 7 April 1987 concerning the conclusion of the International Convention on the Harmonized Commodity Description and Coding System and of the Protocol of Amendment thereto (OJ L 198, 20.7.1987, p. 3, ELI: http://data.europa.eu/eli/dec/1987/369/oj).

— the general rules for the interpretation of the HS as set out in the Annex to the HS Convention.

(b) where applicable, and except for the Recommendation to the Contracting Parties concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention, shall take into account the following specific criteria:

— case law of the Court of Justice of the European Union related to customs classification of goods,

— HS Nomenclature and HS Explanatory Notes, Classification opinions and decisions taken by the HSC,

— the Combined Nomenclature (CN) ([2]) subheadings and CN Explanatory Notes,

— classification regulations and decisions adopted by the Commission,

— conclusions of the Customs Code Committee, Tariff and Statistical Nomenclature Section, and

— any other legal acts or guidelines related to the customs classification of goods developed by the Council or the Commission.

3. ORIENTATIONS

The Union shall, where appropriate, endeavour to support the adoption of the following decisions in the WCO, according to the principles and criteria referred to in points 1 and 2:

(a) to propose and prepare Explanatory Notes, Classification Opinions or other advice as guidance to the interpretation of the HS;

(b) to prepare recommendations to secure uniformity in the interpretation and application of the HS;

(c) recommendation to the Contracting Parties concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention, adopted by the Council pursuant to Article 8(1) and Article 16 thereof;

II. Specification of the position to be taken on behalf of the Union within the World Customs Organisation with regard to the adoption of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention, and the Recommendation concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention.

Before each meeting of the HSC during which the HSC is called upon to adopt decisions that have legal effects on the Union, the necessary steps shall be taken so that the position to be expressed on the Union's behalf takes account of the latest technical and other relevant information transmitted to the Commission, in accordance with the principles, criteria and orientations set out in section I. In order to preserve Union's rights and interests within the WCO, the Commission shall attach special attention to the availability of working documents in conformity with the rules of procedures of the HSC.

([2]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1, ELI: http://data.europa.eu/eli/reg/1987/2658/oj).

To this effect, and based on that information, the Commission shall transmit to the Council, in sufficient time before each meeting of the HSC referred to in point 1, a written document setting out the particulars of the proposed specification of the Union's position for discussion and endorsement of the details of the position to be expressed on the Union's behalf. The Council shall examine the Commission's documents within the best possible timeframe.

If the Council does not endorse a specific part of the proposal, the Commission will not present a Union position on that part at the HSC.

In cases where the Union's position differs in substance from the decision adopted by the HSC, the Commission shall, in sufficient time before the deadline provided for in Article 8(3) of the HS Convention, transmit to the Council for discussion and endorsement a written document setting out that the decision(s) at issue can be accepted or that the matter needs to be referred to the WCO Council or to the HSC for re-examination pursuant to Article 8(2) of the HS Convention.

To preserve the Union's rights and avoid a decision on a matter on which the Council is unable to reach a position before the deadline provided for in Article 8(3) of the HS Convention being adopted in the WCO, the Commission shall request on behalf of the Union that the matter be referred to the WCO Council or to the HSC for re-examination pursuant to Article 8(2) of the HS Convention.

Before the meeting of the WCO Council during which the WCO Council is called upon to adopt the Recommendation concerning the amendment of the Nomenclature appended as an Annex to the Harmonized System Convention, the Commission shall transmit to the Council, in sufficient time before the WCO Council meeting, a draft document setting out the particulars of the proposed specification of the Union's position for discussion and endorsement of the details of the position to be expressed on the Union's behalf. The Council shall examine the Commission's documents within the best possible timeframe.