EUROPEAN
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ANNEX

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to the

Proposal for a

COUNCIL DECISION
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 Harmonised System Convention

ANNEX

I. Position to be taken on behalf of the European Union within the World Customs Organization 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

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 Harmonised 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

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

(b) where applicable, 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,

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1 OJ L 198, 20.7.1987, p.3.

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, 9. 1.

- 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;

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

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.

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.