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European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION on the position to be taken on behalf of the European Union in the World Customs Organization in relation to the Harmonized System
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COUNCIL DECISION (EU) 2019/...

of ...

**on the position to be taken on behalf of the European Union
in the World Customs Organization in relation to the Harmonized System**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 28(1), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The International Convention on the Harmonized Commodity Description and Coding System ('the HS Convention') was concluded by the Union by means of Council Decision 87/369/EEC of 7 April 1987¹ and entered into force on 1 January 1988.
- (2) Pursuant to Article 7 of the HS Convention, the Harmonized System Committee may prepare for the World Customs Organization (WCO) Council proposals for amendments to the HS Nomenclature. Under Article 16 of the HS Convention, the WCO Council may recommend this amendment to the Contracting Parties.
- (3) The WCO Council is expected to decide at its June 2019 session on a recommendation to the Contracting Parties for an amendment to Chapter 24 of the HS Nomenclature. That recommendation will be adopted on the basis of a proposal for an amendment prepared by the Harmonized System Committee. That proposal should be finalised during the Committee's 63rd session/meeting on 19-29 March 2019.
- (4) The 8th Conference of the Parties of the WHO Framework Convention on Tobacco Control (FCTC) adopted Decision FCTC/COP8(22) on novel and emerging tobacco products to obtain further scientific data on those products and, in particular, to receive clarification on the properties and emissions of those products.

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).

- (5) The classification of goods in the HS Nomenclature is to be governed by the General Rules for the Interpretation of the Harmonized System. It is important to recall that, according to the case law of the Court of Justice of the European Union, in the interests 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 heading of the customs nomenclature and the relative section and chapter notes.
- (6) In view of the recommendation for an amendment to the HS Nomenclature to be adopted by the WCO Council, it is appropriate to establish the position to be taken on behalf of the Union as, once accepted under Article 16 of the HS Convention, the recommendation will be capable of decisively influencing the content of Union law, namely Annex I to Council Regulation (EEC) No 2658/87¹. The position will be expressed at the preparatory stages of the WCO Council, including the Harmonized System Committee.
- (7) It is appropriate to support the draft amendment to the HS Nomenclature concerning Chapter 24 at the time of the meeting of the Harmonized System Committee. The Union should therefore support that part of the Committee's proposal if it is in line with the majority view of the Contracting Parties,

HAS ADOPTED THIS DECISION:

¹ 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).

Article 1

The position to be taken on behalf of the Union in the WCO is set out in the Annex to this Decision.

Article 2

Editorial changes to the position referred to in Article 1 may be agreed upon without further decision of the Council.

Article 3

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

Done at Brussels,

For the Council

The President

ANNEX

The position to be taken on behalf of the European Union
in the World Customs Organization in relation to the Harmonized System

By following the majority of the Contracting Parties to the HS Convention, the Union can accept the draft amendment resulting from the work of the WCO HS Revision Sub-Committee and, subject to editorial changes, should, in principle, express its position as to the choice of wording in two occurrences that remain to be decided:

1. New Note 2 to Chapter 24: support the second option reading: 'Any products classifiable in heading 24.04 and any other heading of the Chapter are to be classified in heading 24.04'. Following the extensive debates on different options, and taking into account all the opinions, including the WHO-WCO Proposal, the Member States confirmed that clear rules for classification of novel tobacco products are needed under one single heading. The Member States, therefore, showed their preference for the position put forward by the WCO Secretariat.
2. New Note 3 to Chapter 24: do not support the inclusion of the text 'whether or not smoke is produced'. The reference to smoke may give rise to confusion as regards the distinction between products in headings 24.02 (and 24.03) and 24.04, as the initial objective and purpose for the creation of the new heading 24.04 is to cover products that are not smoked in the traditional manner.
