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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	1 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 124 final, ANNEX
Subject:	ANNEX to the Proposal for a Council Decision on the position to be taken on behalf of the European Union in the World Customs Organization in relation to the Harmonised System

Delegations will find attached document COM(2019) 124 final, ANNEX.

Encl.: COM(2019) 124 final, ANNEX

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ANNEX

ANNEX

to the

Proposal for a Council Decision

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

ANNEX

The EU should restate its original position in favour of the dismissed joint WHO/WCO proposal, of grouping novel heated tobacco products with other tobacco products under heading 24.03, and defining them objectively via their mode of consumption which involves a heating process[1], as the best possible option.

The EU recalls the WHO Framework Convention on Tobacco Control – to which the EU and all of the Member States are a full Party – and its decision FCTC/COP8(22) on novel and emerging tobacco products. The EU recalls that work is currently carried out by the WHO Framework Convention on Tobacco Control regarding inter alia the nature of emissions produced by novel tobacco products, and that these developments may need to be addressed at a later stage - in the HS2027 review cycle - if there is new evidence relevant for the assessment of the objective characteristics and properties of such products for customs purposes.

The EU, however, should acknowledge that work in the HS 2022 cycle has moved on in a direction different from the WCO/WHO proposal. In light of the above, and in order not to block the decision-making process, the EU:

- by following the majority of the Contracting Parties to the HS Convention, **can accept the draft amendment**, resulting from the work of the WCO HS Revision Sub-Committee, and

- should express its position as to the choice of wording in two occurrences that remain for decision between brackets:

(1) New Note 2 to Chapter 24: **support the first option** reading "2.- Heading 24.04 does not cover the products specified in headings 24.02 and 24.03.". The Union should not support ensuring priority to heading 24.04[2] for the classification of novel tobacco products. It is more appropriate to restrict the scope of that heading to products that are unequivocally classified in it, so that tobacco products that may be classified in that heading but also in another heading of Chapter 24 (24.02[3] or 24.03[4]) would be redirected to those other headings.

(2) New Note 3 to Chapter 24: **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 of 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.

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1 Doc. WCO NC2513B1a (Annex)

2 New heading 24.04 should cover “Products containing tobacco, reconstituted tobacco, nicotine, or tobacco or nicotine substitutes, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body”.

3 Heading 24.02 covers "Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes".

4 Heading 24.03 covers "Other manufactured tobacco and manufactured tobacco substitutes; ’homogenised’ or ’reconstituted’ tobacco; tobacco extracts and essences".