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European Union

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee/Council |
| No. Cion doc.: | COM(2019) 77 final |
| Subject: | 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 - Adoption - Statement by the Commission |

Statement by the Commission

The Commission regrets that references to the joint WHO/WCO previous proposal, as the preferred option, and to the WHO Framework Convention on Tobacco Control (FCTC) are not sufficiently emphasized in the Council text.

The Commission recalls that work is currently carried out, in line with decision FCTC/COP8(22) on novel and emerging tobacco, by the WHO Framework Convention on Tobacco Control - to which the EU and all of the Member States are a full Party - regarding, inter alia, the nature of emissions produced by novel tobacco products and notes 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.

As regards the new Note 2 to Chapter 24, the Commission agrees that the overall objective of this note is to establish clear rules for the classification of novel tobacco products to ensure clarity and certainty for economic operators and customs administrations. The Commission notes that the first option which reads “Heading 24.04 does not cover the products specified in headings 24.02 and 24.03” would restrict the scope of that new heading to products that are unequivocally classified in it. Under the option put forward by the Council, it will be important to ensure that products classified in the new heading 24.04 are, in line with the EU Court jurisprudence, classified according to their objective characteristics and properties on a case-by-case basis, and to avoid their classification in this heading solely on the basis of a declaration by economic operators that these products are intended for inhalation without combustion.
