Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	15 May 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 196 final
Subject:	ANNEXES 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

Delegations will find attached document COM(2020) 196 final.

Encl.: COM(2020) 196 final

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COM(2020) 196 final

ANNEXES 1 to 2

ANNEXES

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

The position to be taken on the Union's behalf in the World Customs Organisation

1. PRINCIPLES

In the framework of the WCO, the Union shall:

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

(b) work towards an appropriate involvement of stakeholders in the preparation phase for HSC decisions and ensure that decisions adopted in the WCO are in accordance with the HS Convention;

(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 elaborated 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 and international commitments.

2. CRITERIA

The positions to be taken on the Union's behalf in the WCO shall be established according to the following:

(a) 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,

– the general rules for the interpretation of the HS as set out in the Annex to the HS Convention[1].

Where applicable, it shall take into account the following:

(b) 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 HS Committee,

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

- classification Regulations and Decisions adopted by the Council or the Commission,

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[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).

[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.

- conclusions of the Customs Code Committee, Tariff and Statistical Nomenclature Section,
- and any other guidance related to the customs classification of goods elaborated by the institutions in the form of legal acts or guidelines.

3. ORIENTATIONS

The Union shall, where appropriate, endeavour to support the adoption of the following decisions in the WCO, according to the above-mentioned principles and criteria:

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

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

ANNEX II

Specification of the Union's position to be taken in the World Customs Organisation

Before each meeting of the HSC, when that body 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 Annex I.

To this effect, and based on that information, the Commission shall transmit to the Council, or to its preparatory bodies, in sufficient time before each meeting of the HSC referred to in the paragraph above, a written document setting out the particulars of the proposed specification of the Union's position. Within 5 working days of the date where the Commission has informed the Council, or its preparatory bodies, the Council may express its disagreement with the position proposed for one or more of the individual HS decisions concerned.

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

In cases where the Union’s position substantially differs from the decision adopted by the HSC, the Commission shall, in sufficient time before the expiry of the deadline foreseen under Article 8(2) of the HS Convention, transmit to the Council, or to its preparatory bodies, a written document setting out whether the decision(s) at issue can be accepted or if the matter needs to be referred to the WCO Council and referred to the HSC for re-examination pursuant to Article 8(3) of the HS Convention. Within 10 working days of the date where the Commission has informed the Council, or its preparatory bodies, the Council may express its disagreement with the position proposed for one or more of the individual HSC decisions to be adopted in the WCO.