



EUROPEAN  
COMMISSION

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Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the World Customs Organization Council in relation to the adoption of a draft amendment to the Rules of Procedure of the Harmonized System (HS) Committee**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Council of the World Customs Organization in connection with the envisaged approval of a draft amendment to the Rules of Procedure of the Harmonized System (HS) Committee.

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The International Convention on the Harmonized Commodity Description and Coding System**

The International Convention on the Harmonized Commodity Description and Coding System ('the Agreement')<sup>1</sup> aims to facilitate international trade and the collection, comparison and analysis of statistics, in particular those on international trade. It includes as an Annex the HS Nomenclature which is an international harmonized system enabling participating countries to classify traded goods on a common basis for customs purposes. In particular, the HS Nomenclature includes the description of the goods, which appear as headings and subheadings, and their related numerical codes, based on a 6-digit code system. The HS Nomenclature is revised every five years<sup>2</sup>. It is applied by more than 200 countries and economies worldwide; consequently, more than 98% of all goods traded in the world are classified according to it.

The Agreement entered into force on 1 January 1988.

The European Union and all Member States are parties to the Agreement.

#### **2.2. The World Customs Organization (WCO)**

The World Customs Organization (WCO), established in 1952 as the Customs Co-operation Council, is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of Customs administrations. The WCO offers its Members a range of Conventions and other international instruments, as well as technical assistance and training services. Today, the WCO represents 184 Customs administrations across the globe.

The WCO's governing body is the Council, which relies on the competence and skills of a Secretariat and a range of technical and advisory committees to accomplish its mission.

The technical Committee of the WCO which is in charge of the preparatory work related to the Agreement is the HS Committee. The main tasks of the HS Committee are the following:

- To ensure uniform interpretation and application of the HS legal texts, including by settling classification disputes between Contracting Parties, thus facilitating trade;
- To propose amendments and updates to the HS to reflect developments in technology and changes in trade patterns as well as other needs of users;
- To promote widespread application of the HS and examine general questions and policy matters relating to it.

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<sup>1</sup> Council Decision 87/369 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 of 20.7.1987, p.1).

<sup>2</sup> Since when it was introduced, in 1988, the HS Nomenclature has been revised six times. These revisions entered into force in 1996, 2002, 2007, 2012, 2017 and 2022.

According to paragraph 6 of Article 6 of the HS Convention, the HS Committee “*shall draw up its own Rules of Procedure by decision taken by not less than two-thirds of the votes attributed to its members. The Rules of Procedure so drawn up shall be approved by the Council.*”

Pursuant to Rule 26 of the Rules of Procedure of the HS Committee, “[t]hese Rules may be revised, in whole or in part, in accordance with the provisions of paragraph 6 of Article 6 of the Convention.”

The positions to be taken by the Union in the WCO on HS matters are coordinated with the Member States. The Union and its Member States have together only one vote in the WCO HS Committee. In the WCO Council, for matters of EU competence, such as HS matters, the EU votes on behalf of the Member States present in the meeting.

### 2.3. The envisaged act of the WCO Council

On its 139<sup>th</sup>/140<sup>th</sup> sessions (23-25 June 2022), the WCO Council is to approve amendments to the Rules of Procedure 19 and 20 of the HS Committee ('the envisaged act').

At its 64<sup>th</sup> session (September 2019), the HS Committee agreed by consensus on the amendment proposal to Rule of Procedure 20 to clarify the reservation procedure. Because of the pandemic this question has not been submitted yet to the WCO Council for approval.

At its 68<sup>th</sup> session (September 2021), the HS Committee agreed on the amendment proposal to Rule of Procedure 19 to clarify the voting procedure.

The amendment proposals to Rules of Procedure 19 and 20 are explained below.

#### **Amendments to Rule of Procedure 19**

- By amending the third and fourth paragraph of Rule 19, the draft amendment brings clarity for the determination of the majority necessary for the HS Committee to take decisions concerning amendments to the HS Convention (no less than two-thirds of the votes cast by the Members of the Committee), e.g. for amendments to the HS Nomenclature, as well as for other decisions requiring a simple majority (more than 50 per cent of the votes cast by the Members of the Committee), e.g. for classification decisions, Explanatory Notes, Classification opinions, etc.
- The main goal is to ensure that, in case of several options to be discussed, a smooth and transparent procedure is followed so that the decision of the Committee results in the support of an overall majority of members of the Committee for the option remaining after the progressive elimination of the one(s) having received less support.
- The draft amendment is shown in the below table (and changes underlined):

	Present text	New text
Third paragraph	Decisions concerning amendments to the Convention shall be taken by a majority of not less than two-thirds of the votes cast by the Members of the Committee.	Decisions concerning amendments to the Convention shall be taken by a majority of not less than two-thirds of the votes cast by the Members of the Committee. <u>However, if there are two or more options for the amendment, then the Committee shall firstly undertake a stepped voting procedure, as outlined below under the simple majority voting procedures, to reduce the options to one. Once there is a single</u>

		<u>option for the amendment, then a final vote on whether to accept or reject the amendment would be taken under the two-thirds majority rule.</u>
Fourth paragraph	Other decisions shall be taken by a simple majority of the votes cast by the Members of the Committee.	Other decisions shall be taken by a simple majority ( <u>more than 50 per cent</u> ) of the votes cast by the Members of the Committee. <u>If there are more than two options and none of them has achieved more than 50 per cent of the votes cast by the Members of the Committee, a simple majority voting shall apply a stepped voting practice that reduces the number of options by dropping out the lowest voted option until the highest voted option achieves more than 50 per cent of the votes cast by the Members of the Committee.</u>

### **Amendments to Rule of Procedure 20**

- By amending Rule 20, paragraphs 1 and 4, which become paragraphs 2 and 1, respectively, the draft amendment clarifies that notifications to the WCO Secretary General to refer any matter examined by the HS Committee to the Council or back to the HS Committee for re-examination, should be received by the Secretary General before 24:00 (Brussels time) of the last day of the period.
- This amendment is particularly relevant for administrations located in a different time zone than WCO headquarters, whose notifications might be received by the WCO Secretary General after the expiration of the period allowed for entering such requests for re-examination according to the time zone where the WCO Secretariat is located.
- The draft amendment is shown in the below table (and changes underlined):

Present text	New text
<p>Pursuant to Council Decision No. 298, the Secretary General may refer matters arising under paragraph 2 of Article 8 of the Convention directly back to the Committee upon the request of a Contracting Party, provided that the request is made in writing not later than the end of the second month following the month during which a session of the Committee was closed. The Secretary General shall then place the matter on the Agenda of the following session of the Committee for re-examination.</p> <p>If requests relating to the same matter are received from different Contracting Parties for referral both to the Council and to the Committee, or if a Contracting Party does not specify whether the matter should be referred to the Council or directly to the Committee, the matter shall be referred to the Council. The</p>	<p>Notifications to the Secretary General to refer any matter to the Council or Committee for re-examination pursuant <u>to paragraph 2 of Article 8</u> of the Convention and Council Decision No. 298 may not be <u>made</u> before the day following the close of the Committee's session, but must be <u>made</u> by the end of the second month following the month during which that session was closed. <u>A notification shall be considered made within the period if it was received by the Secretary General before 24:00 (Brussels time) of the last day of the period.</u></p> <p>Pursuant to Council Decision No. 298, the Secretary General may refer matters arising under paragraph 2 of Article 8 of the Convention directly back to the Committee upon the request of a Contracting Party, provided that the request is made <u>within the period</u></p>

<p>Secretary General shall inform all Contracting Parties of the receipt of a request for referral of a matter to the Council or to the Committee.</p> <p>A Contracting Party making a request for referral of a matter to the Council or to the Committee may withdraw its request at any time before the matter is examined by the Council or re-examined by the Committee. However, the Committee will examine a matter if it has been referred by the Council. In the event that a Contracting Party withdraws a request, the original decision of the Committee shall be deemed to be approved, unless a request from another Contracting Party dealing with the same matter is pending. The Secretary General shall notify Contracting Parties of any withdrawal.</p> <p>Notifications to the Secretary General to refer any matter to the Council or Committee for re-examination pursuant to Article 8.2 of the Convention and Council Decision No. 298 may not be submitted before the day following the close of the Committee's session, but must be submitted by the end of the second month following the month during which that session was closed.</p> <p>When, pursuant to the provisions of paragraph 3 of Article 8 of the Convention and Council Decision No. 298, any matter is referred in whole or in part to the Committee for re-examination, the Contracting Party which has requested that the matter be re-examined shall submit to the Secretary General, not less than 60 days before the opening date of the next session of the Committee, a note setting out its reasons for requesting the re-examination, together with its proposals for resolving the matter. The Secretary General shall circulate this note to the other Contracting Parties.</p>	<p><u>specified in the preceding paragraph.</u> The Secretary General shall then place the matter on the Agenda of the following session of the Committee for re-examination.</p> <p>If requests relating to the same matter are received from different Contracting Parties for referral both to the Council and to the Committee, or if a Contracting Party does not specify whether the matter should be referred to the Council or directly to the Committee, the matter shall be referred to the Council. The Secretary General shall inform all Contracting Parties of the receipt of a request for referral of a matter to the Council or to the Committee.</p> <p>A Contracting Party making a request for referral of a matter to the Council or to the Committee may withdraw its request at any time before the matter is examined by the Council or re-examined by the Committee. However, the Committee will examine a matter if it has been referred by the Council. In the event that a Contracting Party withdraws a request, the original decision of the Committee shall be deemed to be approved, unless a request from another Contracting Party dealing with the same matter is pending. The Secretary General shall notify Contracting Parties of any withdrawal.</p> <p>When, pursuant to the provisions of paragraph 3 of Article 8 of the Convention and Council Decision No. 298, any matter is referred in whole or in part to the Committee for re-examination, the Contracting Party which has requested that the matter be re-examined shall submit to the Secretary General, not less than 60 days before the opening date of the next session of the Committee, a note setting out its reasons for requesting the re-examination, together with its proposals for resolving the matter. The Secretary General shall circulate this note to the other Contracting Parties.</p>
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### 3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The proposed position aims at expressing support for the draft amendment to the Rules of Procedure of the HS Committee.

It is important for the EU that such an amendment is adopted as it aims at clarifying the decision-making process of the HS Committee, and at ensuring that decisions are taken by an undisputed majority of Members of this Committee.

Consultations were carried out with the Member States within the Customs Expert Group – HS/WCO Coordination, and within the Council.

The proposed position is therefore as follows:

- On the amendment of the Rules of Procedure, the Union should support the adoption of the amendment.
- As the case may arise, the Union should also support further editorial amendments that may be proposed by the WCO Secretariat.

The proposed EU position is in line with the established Customs policy and practice followed by the HS Committee.

The proposed position is necessary so that the EU is able to express a position at the next WCO Council.

## **4. LEGAL BASIS**

### **4.1. Procedural legal basis**

#### *4.1.1. Principles*

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing *‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’*

The concept of *‘acts having legal effects’* includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are *‘capable of decisively influencing the content of the legislation adopted by the EU legislature’*<sup>3</sup>.

Therefore, the procedural legal basis for the proposed decision establishing the position to be adopted on the Union’s behalf and concerning the envisaged act is Article 218(9) TFEU.

#### *4.1.2. Application to the present case*

The WCO Council is a body set up by an agreement, namely the Convention Establishing a Customs Cooperation Council of 15 December 1950. It is the body responsible, under the International Convention on the Harmonized Commodity Description and Coding System, for issuing recommendations to the Contracting Parties for amending this Convention and for approving the Rules of Procedure of the HS Committee.

The WCO Council is expected, in accordance with Article 6 of the HS Convention, to approve an amendment of the Rules of Procedure of the HS Committee at its June meeting. Once approved, the amendment will have legal effect in the EU legislation, namely: Annex 1 to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. This is because Article 2(a) of the said Regulation states *“2. The combined nomenclature shall comprise: (a) the harmonized system nomenclature;”* and that this amendment will have effect on how the decision-making process concerning the interpretation and amendment of the Harmonized System Nomenclature is conducted in the HS Committee, and as a consequence, how the combined nomenclature is interpreted.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

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<sup>3</sup> Judgment of the Court of Justice of 7 October 2014, Germany v Council, Case C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

## **4.2. Substantive legal basis**

### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

### *4.2.2. Application to the present case*

As the main objective and content of the envisaged act relate to the decision-making process in the interpretation of the tariff and application of an international agreement in the common commercial policy, and implementation of the HS nomenclature and of the EU Combined Nomenclature, the substantive legal basis of the proposed decision is Articles 31, 43(2) and 207(4) first subparagraph TFEU.

## **4.3. Conclusion**

The legal basis of the proposed decision should be Articles 31, 43(2) and 207(4) first subparagraph TFEU, in conjunction with Article 218(9) TFEU.

## **5. BUDGETARY IMPLICATIONS**

The proposal has no implication for the European Union budget.

Proposal for a

## **COUNCIL DECISION**

### **on the position to be taken on behalf of the European Union in the World Customs Organization Council in relation to the adoption of a draft amendment to the Rules of Procedure of the Harmonized System (HS) Committee**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 31, 43(2) and 207(4), first subparagraph, 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 Agreement'), concluded by the Union by Council Decision 87/369<sup>1</sup>, entered into force on 1 January 1988.
- (2) Pursuant to Article 6(6) of the Agreement, the Harmonized System (HS) Committee is to draw up its own Rules of Procedure by decision taken by not less than two-thirds of the votes attributed to its members. The Rules of Procedure so drawn up are to be approved by the Council.
- (3) The WCO Council is expected to approve a draft amendment to the Rules of Procedure of the HS Committee at its June sessions. Such an amendment will be approved on the basis of a proposal drawn up by the HS Committee and finalised during its 64<sup>th</sup> (18-27 September 2019) and 68<sup>th</sup> (6-28 September 2021) sessions. It will enter into force upon adoption.
- (4) It is of utmost importance that the HS Committee takes its decisions in a transparent and efficient way, and that such decisions receive the maximum support from the members of this Committee.
- (5) Since that draft amendment to the Rules of Procedure of the HS Committee is to be approved by the WCO Council, it is appropriate to establish the position to be taken on the Union's behalf, as once approved, the amended Rules of Procedure will be binding on the Union and capable of influencing the content of Union law, namely Annex I to Council Regulation (EEC) No 2658/87<sup>2</sup>.
- (6) Therefore, it is appropriate that the Union's position should be to support the draft amendment to the Rules of Procedure of the HS Committee, and any minor editorial or linguistic adaptations that may be deemed necessary,

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<sup>1</sup> 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).

<sup>2</sup> 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)



HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the June 2022 sessions of the WCO Council shall be to support the draft amendment to the Rules of Procedure of the HS Committee, as set out in the Annex.

The representatives of the Union may agree to minor editorial or linguistic adaptations in the light of developments at the upcoming WCO Council sessions, in consultation with Member States, or during on-the-spot coordination meetings, without a further decision of the Council.

*Article 2*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*  
*The President*