



HARMONIZED SYSTEM  
COMMITTEE

-  
26<sup>th</sup> Session

NC0268E1  
(+ Annex)  
O. Eng.

Brussels, 6 October 2000.

## THE APPLICATION OF HARMONIZED SYSTEM COMMITTEE DECISIONS

(Item III.2 on Agenda)

### Reference documents :

99NL724E - LP/MR – letter to all HS Contracting  
Parties  
NC0100E1 (HSC/24)  
NC0152E1 (HSC/24)  
NC0156E1 (HSC/24)  
NC0160E2, Annexes C/3 and L (HSC/24 – Report)

SP0021E1 (PC/42)  
SP0025E2 (PC/42 – Report)  
99NL1106 – Li/Gon – letter to all HS Contracting  
Parties  
NC0175E1 (HSC/25)  
NC0250E2, Annex C/1 (HSC/25- Report)

### I. BACKGROUND

1. At its 25<sup>th</sup> Session, the Harmonized System examined the results of the Secretariat's survey on the non-application of HSC decisions. The Committee noted that the results of the survey confirmed that there was wide-spread application of HSC classification decisions.
2. With regard to the issue of a possible Council Recommendation requesting HS Contracting Parties to notify the Council if they could not implement an HSC classification decision, the Chairman concluded that most delegations consulted were in favour of such a Council Recommendation and instructed the Secretariat to pursue the study. Apart from a draft Council Recommendation, the Secretariat would also look at different options to improve transparency regarding the application of HSC classification decisions and put forward its proposals for consideration by the Committee at its next session. The issue relating to the application or non-application of HSC classification decisions would remain on the HSC Agenda for the time being and it would be decided later whether to make it a permanent Agenda item or not.

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## II. SECRETARIAT COMMENTS

3. The Secretariat has not received any further proposal during the intersession regarding this issue, but would like to make the following comments based on the observations of delegates at the Committee's last session.

### Council Recommendation

4. At the last session, there was general support for the efforts of the HSC to achieve greater transparency, efficiency and uniformity regarding the implementation of HSC decisions and there was no objection to a possible Council Recommendation requesting HS Contracting Parties to notify the Council if they could not implement an HSC classification decision.
5. The EC Delegate was of the view that the possibility of a Recommendation should first be examined and the study should be open to different ideas. He suggested that the draft Recommendation could include (1) notification of the decisions not applied by Members, (2) the specific reasons for non-application, and (3) an indication of a flexible period of time to submit such notification (e.g., two years after their approval).
6. The US Delegate stated that the US could, in principle, support the study of a Recommendation by the Council provided that the Recommendation included explicit language recognizing that compliance was subject to national legal procedures. He also suggested that, since the situation regarding implementation of HSC classification decisions was quite satisfactory, a Recommendation might not be necessary and that Members could simply be requested to provide notification to the WCO so as to make more rapid progress.
7. While the results of the survey did not demonstrate wide-spread non-application of HSC classification decisions, the picture regarding implementation of HSC classification decisions by all Contracting Parties is not yet complete and a Council Recommendation might help to clarify the situation. The Secretariat considers that there should be no difficulty for the HSC to prepare a draft Council Recommendation since there was overall support for such an instrument.
8. The draft Council Recommendation should encourage all Members to apply the HSC classification decisions and request notification in case of non-application for the purpose of achieving greater transparency and uniformity regarding the implementation of HSC classification decisions. It should include such specific terms as suggested by the EC and any other elements, if any, to be proposed by Contracting Parties.
9. In view of the above, the Secretariat has prepared a first draft of a Council Recommendation requesting HS Contracting Parties to notify the Council if they are unable to implement an HSC classification decision for preliminary discussion by the Committee (see the Annex to this document for the draft Recommendation).
10. With regard to the time period to submit such notification, the Secretariat proposed 6 months after an HSC classification decision is approved by the Council instead of two years as suggested by the EC, given that the Secretariat's survey showed that, if there are no problems regarding implementation, almost all Contracting Parties are able to apply a decision within such period of time (Doc. NC0175E1).

Publication of national classification decisions

11. Speaking in support of the efforts of the HSC to achieve transparency at the last session, the US Delegate also pointed out that his administration made its classification decisions available on the Internet and encouraged other administrations to do the same.
12. The Secretariat agrees that publishing national classification decisions on the Internet is an important and effective way to achieve greater transparency through exchange of information between administrations. Therefore the Secretariat supports the idea with the proviso that national classification decisions should be publicised on Members web sites, which should be linked to the WCO web site. Accordingly, the draft Council Recommendation could encourage Members to publish their national classification decisions on the Internet.

III. CONCLUSION

13. Although different options might be studied in the future to improve transparency, the Secretariat is of the view that it would be more efficient for the HSC to focus for the time being on the development of the draft Council Recommendation requesting notification of non-application, which would include reference to encouraging Members to make their classification decisions available on the Internet. Therefore, the Committee is invited to express its views on the draft Recommendation set out in the Annex to this document.

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Annexe au Doc. NC0268B1  
Annex to

(CSH/26/nov. 2000)  
(HSC/26/Nov. 2000)

ANNEXE

PROJET DE RECOMMANDATION DU CONSEIL DE COOPERATION DOUANIERE  
CONCERNANT L'APPLICATION DES DECISIONS DE CLASSEMENT  
DU COMITE DU SYSTEME HARMONISE  
(Point III.2 de l'ordre du jour)

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ANNEX

DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL ON  
THE APPLICATION OF HARMONIZED SYSTEM COMMITTEE CLASSIFICATION  
DECISIONS  
(Item III.2 on Agenda)

PROJET DE RECOMMANDATION DU CONSEIL DE COOPERATION DOUANIÈRE  
CONCERNANT L'APPLICATION DES DÉCISIONS DE CLASSEMENT  
DU COMITÉ DU SYSTÈME HARMONISÉ

LE CONSEIL DE COOPERATION DOUANIÈRE,

EU EGARD aux articles 6, 7 et 8 de la Convention internationale sur le Système harmonisé de désignation et de codification des marchandises (ci-après dénommée "Convention sur le Système harmonisé"),

PRENANT ACTE que les décisions du Comité du système harmonisé couvrent les Notes explicatives, les Avis de classement et autres avis relatifs à l'interprétation du Système harmonisé qui visent à assurer une interprétation et une application uniformes du Système harmonisé et qui ont été rédigés au cours d'une session du Comité du système harmonisé conformément aux dispositions du paragraphe 1 de l'article 7, comme indiqué au paragraphe 2 de l'Article 8 de la Convention sur le Système harmonisé,

CONSIDÉRANT qu'il est souhaitable de parvenir à plus de transparence et d'uniformité dans la mise en oeuvre de ces décisions, afin d'assurer une interprétation et une application uniformes du Système harmonisé,

RECOMMANDE que les administrations membres et les Parties contractantes à la Convention sur le Système harmonisé signalent au Secrétaire général les cas où elles ne sont pas en mesure de mettre en oeuvre une décision de classement du Comité du système harmonisé dans les six mois suivant l'approbation de cette décision par le Conseil. Cette notification devrait fournir des précisions sur la ou les décisions non appliquées, les raisons précises de cette non-application et une estimation de la date à laquelle la décision pourrait être appliquée. Le Secrétaire général transmettra cette notification aux administrations membres des Parties contractantes à la Convention sur le Système harmonisé,

et

Annexe au doc. NC0268B1  
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DEMANDE aux administrations membres et aux Parties contractantes à la Convention du  
Système harmonisé de publier leurs décisions de classement sur Internet.

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DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL ON  
THE APPLICATION OF HARMONIZED SYSTEM COMMITTEE CLASSIFICATION  
DECISIONS

THE CUSTOMS CO-OPERATION COUNCIL,

HAVING REGARD to Articles 6, 7 and 8 of the International Convention on the Harmonized Commodity Description and Coding System (hereinafter referred to as the Harmonized System Convention),

NOTING that Harmonized System Committee decisions cover the Explanatory Notes, Classification Opinions and other advice on the interpretation of the Harmonized System to secure uniformity in the interpretation and application of the Harmonized System, prepared during a session of the Harmonized System Committee under the provisions of paragraph 1 of Article 7, as referred to in paragraph 2 of Article 8 of the Harmonized System Convention,

CONSIDERING that it is desirable to achieve greater transparency and uniformity regarding the implementation of these decisions, with a view to securing uniformity in the interpretation and application of the Harmonized System,

RECOMMENDS that Member administrations and Contracting Parties to the Harmonized System Convention notify the Secretary General if they are not able to implement a Harmonized System Committee classification decision within six months after such a decision is approved by the Council. Such notification should include information as to the decision(s) not applied, the specific reasons for non-application and an indication as to when the decision could be applied. The Secretary General will transmit such notification to Member administrations and to Contracting Parties to the Harmonized System Convention,

and

REQUESTS Member administrations and Contracting Parties to the Harmonized System  
Convention to publish their classification decisions on the Internet.

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