



HARMONIZED SYSTEM  
COMMITTEE

-  
27<sup>th</sup> Session  
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NC0356E1  
(+ Annexes I and II)  
O. Eng.

Brussels, 30 March 2001.

STUDY OF THE FAST-TRACK PROCEDURE  
(RULE 20 OF THE RULES OF PROCEDURE OF THE HSC)  
(Item III.1 on Agenda)

Reference documents :

SC0008E1 (Council/93/94)  
NC0250E2 Annex O (HSC/25 - Report)  
NC0261E1 (HSC/26)  
NC0340E2 (HSC/26 - Report)

I. BACKGROUND

1. At its 26<sup>th</sup> Session (November 2000), under Agenda Item II.3, the Committee took note of the communication from the Secretariat that the decisions taken by the Committee at its 25<sup>th</sup> Session (March 2000) had been deemed approved by the Council (July 2000), in accordance with Article 8.2 of the Harmonized System Convention, except those in respect of which reservations had been entered. These reservations were entered by certain administrations either by requesting that the decisions be referred to the Council (Article 8.2 procedure) or directly back to the HSC (fast-track procedure, as provided for in Rule 20 of the Rules of Procedures of the HSC (see Annex I), based on Council Decision No. 298 of June 1999 (see Annex II)).
2. One delegate, however, wondered whether the statement made in the fourth paragraph of the working document (NC0261E1) concerning the procedure followed for re-examining HSC decisions (reservations) did not in fact run counter to Article 8 of the HS Convention. In his opinion, the fast-track procedure should only be envisaged in cases where the Council did not meet between the two HSC sessions. If this were not the case, all reservations should be systematically submitted to the Council.
3. In response, the Director stated that the Secretariat was of the view that, based on Rule 20 of the HSC's Rules of Procedure (in accordance with Council Decision No. 298), there was no limitation on the use of the fast-track procedure. In other words, at the option of

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the reserving administration, a request to refer a question directly back to the Committee could be made at any time.

4. In light of the foregoing and in order to provide Contracting Parties with more information, the Secretariat agreed to carry out a study on the matter for examination by the Committee at its next session (see page 5 of Doc. NC340E2 for the above).

## II. SECRETARIAT COMMENTS

5. After careful study, the Secretariat stands by its comments made at the last session of the Committee and would like to expand its understanding of this issue as follows :

- (1) In accordance with paragraph 2 of Council Decision No. 298, there is no limitation on the use of the fast-track procedure for re-examination of certain HSC decisions (namely, to refer an HSC decision directly back to the Committee, without having to refer it to the Council as provided by Article 8.2 of the HS Convention). The first sentence of paragraph 2 of Council Decision No. 298 explicitly specifies that the fast-track procedure shall apply "WHENEVER" a Contracting Party to the HS Convention so requests. This implies that, from a procedural point of view, the fast-track procedure shall apply regardless of whether the Council meets between two HSC sessions or not, although the use of the fast-track procedure will work better to expedite the HSC's decision-making process in the case where the Council does not meet between two HSC sessions. The option to use the fast-track or Council procedure is left entirely to the administrations concerned and therefore the Secretariat considers that all rights of Contracting Parties under Article 8 of the HS Convention are fully safeguarded.
- (2) From a practical point of view, the Secretariat would like to point out that, in the case where the Council meets between two HSC sessions, whether a reservation is submitted to the Council or the issue is referred directly back to the HSC, the procedure for its re-examination by the HSC will not change. In either event, the reservation will be re-examined at the HSC session immediately following the Council Session. In this connection, it should also be stressed that the Council's role with regard to reservations is purely administrative and that the Council must send a question back to the Harmonized System Committee, if requested by a Contracting Party. For that reason, the Council would clearly prefer to forego this mechanical task.
- (3) However, in the case where the Council meets between two HSC sessions, the Secretariat would like to draw the Committee's attention to a likely case where a reservation might be entered, without using the fast-track procedure, after the Council Session closes but before the end of the second month following the month during which the HSC session is closed. Such a situation can occur as a result of by the late meeting of the Spring session of the HSC and, in that case, the HSC will have to wait for nearly one and a half years to re-examine a reservation. Therefore, the Secretariat would strongly encourage Members to use the fast-track procedure to the extent possible.

## III. CONCLUSION

6. The Committee is invited to express its views on the Secretariat's comments concerning the use of the fast-track procedure (Rule 20).

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RULE 20 OF THE RULES OF PROCEDURE  
OF THE HARMONIZED SYSTEM COMMITTEE

“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.

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.

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.

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.

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.”

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**DECISION OF THE COUNCIL No. 298**

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**93rd/94th Sessions – June 1999**

**PROCEDURE FOR RE-EXAMINATION OF CERTAIN MATTERS**

**BY THE HARMONIZED SYSTEM COMMITTEE**

THE COUNCIL,

HAVING REGARD to Article III of the Convention establishing a 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),

HAVING REGARD to Rule 20 of the Rules of Procedure of the Harmonized System Committee,

CONSIDERING that it is desirable to introduce an expeditious procedure which would enable timely re-examination of a matter for which a request has been made under paragraphs 2 and 3 of Article 8 of the Harmonized System Convention,

DECIDES as follows :

1. The Council authorizes the Secretary General, at the request of a Contracting Party, to refer directly back to the Harmonized System Committee matters arising under paragraph 2 of Article 8 of the Harmonized System Convention.
2. The following procedure shall apply whenever a Contracting Party to the Harmonized System Convention requests under paragraph 2 of Article 8 of the said Convention, that the Explanatory Notes, Classification Opinions, other advice on the interpretation of the Harmonized System or recommendations 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 be referred to the Council :
  - (a) not later than the end of the second month following the month during which the session of the Harmonized System Committee was closed, a Contracting Party may request in writing to the Secretary General that such matter be referred :
    - (i) to the Council, or

- (ii) directly back to the Harmonized System Committee for re-examination at its next session;
  - (b) if a request is received in accordance with paragraph 2 (a) (ii), the Secretary General shall place the matter on the Agenda of the following session of the Harmonized System Committee for re-examination;
  - (c) if requests relating to the same matter are received from different Contracting Parties for referral under both 2 (a)(i) and 2 (a)(ii), 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;
  - (d) The Secretary General shall inform all Contracting Parties of the receipt of a request pursuant to paragraph 2 (a).
3. A Contracting Party to the Harmonized System Convention making a request under paragraph 2 (a) may withdraw its request at any time before the matter is examined by the Council or re-examined by the Harmonized System Committee, as the case may be. However, the Committee will examine the matter if it has received a referral from the Council.
4. In the event that a Contracting Party withdraws a request pursuant to paragraph 3, the decision by the Harmonized System Committee shall be deemed approved, unless a similar request from another Contracting Party is pending.
5. The Secretary General shall notify the Contracting Parties of a withdrawal pursuant to paragraph 3.

E. FANTA IVANOVIC,  
Chairman.

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