



HARMONIZED SYSTEM
COMMITTEE

-
27th Session
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NC0362E1
(+Annexes I and II)
O. Eng.

Brussels, 11 April 2001.

DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL
ON THE IMPLEMENTATION OF HSC DECISIONS

(Item IV.1 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)
NC0268E1 (HSC/26)
NC0340E2, Annex C/2 (HSC/26)
00NL1208-Liu/FI – letter to all HS Contracting Parties

I. BACKGROUND

1. At its 26th Session held in November 2000, the Harmonized System Committee examined the issue of the application of Harmonized System Committee decisions (see HSC/26 Report - Doc. NC0340E2 - Annex C/2).
2. There was general support in the Committee for the efforts to achieve greater transparency and uniformity regarding the implementation of HSC decisions by way of a Council Recommendation and several specific suggestions were put forward with regard to the contents of the draft Council Recommendation.
3. The Committee agreed to a proposal that the examination of the draft Council Recommendation should be completed at the next session so that it could be submitted to the Council for approval in June 2001. For that reason, the Chairman urged all administrations to submit their suggestions in writing to the Secretariat, as soon as possible, so as to enable the Secretariat to prepare and circulate a revised version of the draft Council Recommendation for the Committee's re-examination.

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4. Accordingly the Secretariat sent a letter in December 2000 to all Contracting Parties to the HS Convention inviting their administrations to submit written comments on the contents of the draft Council Recommendation.
5. During the intersession, comments were received from Australia, Cyprus, Korea, Peru, Poland, Russia and the United States (see Annex II to this document for details).

II. SECRETARIAT COMMENTS

6. The Secretariat would like to thank those administrations that have submitted written comments during the intersession. While all submissions supported the Council Recommendation to achieve greater transparency and uniformity regarding the implementation of Harmonized System Committee decisions, some administrations found the current wording of the draft Council Recommendation satisfactory, while others proposed amendments for improvement.
7. Accordingly, the Secretariat has prepared a revised version of the draft Recommendation, reflecting the discussions held at the Committee's last session and Members' written comments, which is to be found in Annex I to this document. To facilitate the Committee's discussion, the Secretariat would like to draw the attention of the Committee to the following changes :

Title

The word "APPLICATION" has been replaced by "IMPLEMENTATION", as suggested at the last session; the word "CLASSIFICATION" has been deleted in order to cover all HSC decisions as referred to in paragraph 2 of Article 8 of the HS Convention, and as supported by several written comments.

"NOTING" paragraph

The full text of paragraph 2 of Article 8 of the HS Convention regarding the scope of HSC decisions has been reproduced.

"CONSIDERING" paragraph

The clause "while at the same time recognizing that compliance with these decisions is subject to national legislative procedures" has been added, as the Committee agreed at its last session.

"RECOMMENDS" paragraph

- The United States suggested in its written comments to place the reference to the period of time immediately after the phrase "notify the Secretary General", so as to make it clear that the reference to the time period qualifies "notification" instead of "implementation". The Secretariat, however, believes that it would be more appropriate to keep the language order of the original draft. The intention is that, if a Contracting Party is not able to implement an HSC decision in a specified period of time after such decision is deemed to be approved by the Council, it should then proceed to notify the Secretary General of that fact as soon as practicable. To that effect, the Secretariat proposes to insert the term "as soon as possible" after the phrase "notify the Secretary General".

- With regard to the time period for notification, all the written comments supported a specific time period and more comments favoured the six-month period over the twelve-month period. Based on the result of the Secretariat's previous survey on the application of HSC decisions, a six-month period should be sufficient since, if there are no problems, almost all Contracting Parties are able to apply a decision within such a period of time. Furthermore, the reference to six month does not in any way impose a legal obligation on Contracting Parties to implement these decisions within such a period of time. On the other hand, the Secretariat can appreciate that, for some administrations, it might take longer to decide whether a decision can be implemented or not. Therefore, the Secretariat has kept the alternative of twelve month (in square brackets).

"REQUESTS" paragraph

The phrase "so as to make them easily available and without charge" is inserted in square brackets at the end of the paragraph (as proposed by the United States).

III. CONCLUSION

8. The HSC is invited to approve the revised draft Recommendation at this session, taking into account the Secretariat comments made above and, in particular, to rule on the time period for notification in the "RECOMMENDS" paragraph.

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WRITTEN COMMENTS FROM ADMINISTRATIONS

AUSTRALIA

Australia supports the Council Recommendation to assist efforts to achieve greater transparency and uniformity regarding the implementation of Harmonized System Committee decisions.

In respect of the notification of non-application of decisions, we would prefer to see a specified time period rather than the term "a reasonable amount of time". We agree with those administrations who favour a 12 month period for notification of the non application of decisions.

CYPRUS

The Cyprus Customs Administration does not face any problem in implementing the relevant decisions within the recommended six month period of time, which is considered to be sufficient enough.

In the event of a classification decision not implemented within the prescribed period, a relevant notification will be forwarded to you.

KOREA

The Korean government would support the draft Recommendation for the efforts to achieve greater transparency and uniformity regarding the implementation of HSC decisions by way of a Council recommendation, particularly with regard to the notification of non-application of such an obligation within six months as suggested in the draft Recommendation and the publication of classification decisions on the Internet.

PERU

Problems

HSC classification decisions are not made legally binding on all Parties, nor administratively binding on Customs.

A protocol or a Recommendation would be an appropriate instrument to achieve the objective of giving binding status to HSC decisions. With the Protocol, all the decisions taken by Customs and all the justice organisms, entities and courts must be in conformity with HSC decisions.

If there is any case in the court, Customs always submits the HSC decisions to the court in order to be considered in the decision.

In the latest cases, the national court has taken HSC classification decisions into consideration when reviewing a case on classification because it recognizes the HS Committee has a superior hierarchical level internationally acknowledged.

Since HSC decisions are not legally binding in court, there have been problems when the court takes a different decision.

Peruvian Customs reality

Customs takes the HSC classification decisions as a reference in order to solve problems and classify goods.

HSC classification decisions are accepted immediately no matter how they affect revenue. In Peru, duty rates only have two levels : 87 % of all the goods pay 12 % ad valorem and 13 % pay 20 % ad valorem.

We think that all the Contracting Party administrations should implement HSC classification decisions, unless they enter a reservation.

Peruvian Customs' opinion is that in order to have uniformity in classification, HSC classification decisions must be binding in Customs on the date established by the WCO without restrictions.

HSC decisions classify specific articles with commercial names, uses and in some cases with specific chemical compositions. Peruvian Customs applies HSC classification decisions not only to the specific article but also to the same class or kind of articles, but only in the case they have the same characteristics, uses, compositions, etc.

Every time our administration receives the Compendium of Classification Opinions, it is sent to all the regional offices in order to let them know about the latest HSC classification decisions, and also to be applied by them.

It would be recommended to have the WCO publish all the HSC decisions or to summarize annually all the decisions taken until that date, in order to assure that even when you have not received the documents, you will have updated index of all the HSC decisions.

POLAND

The Central Board of Customs agrees with the comments of paragraph 4.1 of Annex C/2 to Doc. NC0340E2 (HSC/26/Nov. 2000) that the title of the Recommendation should read "...ON THE IMPLEMENTATION OF..." **instead of** "...ON THE APPLICATION OF...", but we think that the title of the Recommendation **should remove** the word "CLASSIFICATION", because the Recommendation concerns all HSC decisions, not only classification decisions. The complete title of the Recommendation would be :

"RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL ON THE IMPLEMENTATION OF HARMONIZED SYSTEM COMMITTEE DECISIONS"

We think, that the full text of Article 8.2 of the HS Convention should not be used to replace the reference to "HSC classification decisions" in the "RECOMMENDS" paragraph of the draft Recommendation, because the Article is completely comprised in the "NOTING" paragraph of the draft.

For the same reason as above the word "classification" **should be deleted** from the "RECOMMENDS" paragraph (third line, after "Harmonized System Committee").

Moreover we would like to suggest **to insert** "any of" in the second line of the "RECOMMENDS" paragraph, after the wording "are not able to implement" and the first sentence of the "RECOMMENDS" paragraph would be :

"RECOMMENDS that Member administrations and Contracting Parties to the Harmonized System Convention notify the Secretary General if they are not able to implement any of a Harmonized System Committee decision within six months after such a decision is approved by the Council".

The Polish Customs Administration agrees with the time limit for notification of non-application. We prefer six-month period, which is, in addition, consistent with Article 16.3 of the HS Convention. If the other Member Administrations would be of the opinion that the time limit for notification is too short, we agree with changing it but we would like to maintain a **definite** time limit.

We **are against** the use of the term "a reasonable period of time", because it does not determine any time limit.

RUSSIA

With regard to the text of the draft Council Recommendation the Russian Customs Administration believes that the title of the Recommendation should read "...ON THE IMPLEMENTATION OF...".

Second, the Russian Administration is of the view that the present wording of the "HAVING REGARD", "NOTING", "CONSIDERING" paragraphs is satisfactory and should not be corrected.

As to the time limit for notification of non-application the HSC classification decisions mentioned in the "RECOMMENDS" paragraph we would like to note that the six-month period is sufficient for the implementation of this obligation.

In respect of the final "REQUESTS" paragraph the Russian Administration notes that we publish our classification decisions on the Internet.

UNITED STATES

In addition to incorporating the changes in wording that were proposed in paragraphs 4.1 and 4.2 of Annex C/2 to Doc. NC0340E2, we propose three other changes.

First, in view of the comments made in paragraph 4.3, we propose additional text in the "CONSIDERING" paragraph. Specifically, we have added the clause "while at the same time recognizing that compliance with decisions is subject to national legislative procedures" at the end of the paragraph. This is done in order to make clear that national law may have an effect on whether or not a Committee decision can be implemented.

Second, in the "RECOMMENDS" paragraph, we would propose that the reference to the period of time for notification be placed directly after the phrase "notify the Secretary

General" in order to make it clear that an administration has one year to submit the notification if it is determined that it cannot be implemented. As originally drafted, the effect of the reference to the period of time would be ambiguous because it could be understood as referring to the period of time in which the decision had to be implemented. Under many national legislative processes, implementation could take more than a year.

The last change is in the "REQUEST" paragraph. We propose to insert the following descriptive reference at the end of the paragraph : "so as to make them easily available and without charge." For example, rulings of the U.S. Customs Service are readily available, in full text and without charge, on the Customs website. We would consider this a valuable consideration for improving transparency and uniformity in classification matters.

We ask the Committee to consider the attached proposal for the Draft Recommendation of the Customs Co-operation Council on the Implementation of Harmonized System Committee Decisions.

DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL ON THE
IMPLEMENTATION OF HARMONIZED SYSTEM COMMITTEE 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 while at the same time recognizing that compliance with decisions is subject to national legislative procedures.

RECOMMENDS that Member administrations and Contracting Parties to the Harmonized System Convention notify the Secretary General within one year after such decision is deemed to be approved by the Council if they are not able to implement a Harmonized System Committee classification decision. Such notification should include information as to 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 classifications decisions on the Internet so as make them easily available and without charge.
