



HARMONIZED SYSTEM  
COMMITTEE

-  
24<sup>th</sup> Session  
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NC0101E1

O. Eng.

Brussels, 1999.

**POSSIBLE AMENDMENT OF THE RULES OF PROCEDURE  
OF THE HARMONIZED SYSTEM COMMITTEE**

**(Item III.4 on the Agenda)**

**I. Background**

1. At its 93<sup>rd</sup>/94<sup>th</sup> Sessions in June 1999, the Council approved a new procedure for the re-examination of certain matters by the Harmonized System Committee (Council Decision No. 298) – the so-called “fast-track procedure for HS reservations”.
2. During the last session of the Committee in May 1999, the Secretary General received a request to submit to the Council a question that had been examined at that session. This was the first time that the Secretariat had received such a request (commonly referred to as a reservation) before the end of the Committee’s meeting.
3. While the Harmonized System Convention specifies that reservations may be entered by Contracting Parties under Article 8 until the end of the second month following the month during which a session of the Harmonized System Committee was closed, the Convention is silent as to how early a reservation may be entered.
4. Rule 20 of the Rules of Procedure of the Harmonized System Committee deals with the procedure regarding reservations. This rule refers, in particular, to the procedure to be followed once the Council has referred any matter to the Committee for re-examination. However, it does not specify the timing for the submission of the request to the Council and, of course, it does not provide for the newly approved fast-track procedure.
5. The Secretariat had always felt and continues to feel that the time period for lodging reservations should not commence prior to the closing of the Committee’s session. The Secretariat believes that the filing of reservations during the Committee’s sessions is counterproductive and should be avoided. In fact, an argument could be made that the Committee’s decisions are not final until the Committee has read and approved the report of its meeting.

## **II. Secretariat Proposal**

6. The Secretariat would, therefore, propose the amendment of Rule 20 of the Committee's Rules of Procedure to reflect the newly approved fast-track procedure for HS reservations. While the procedure has already been formally adopted as a Council Decision, for ease of reference the Secretariat believes that it makes sense to also incorporate the procedure in the HSC's Rules of Procedure.
7. Furthermore, in order to avoid the lodging of reservations during the Committee's sessions in the future, the Secretariat would propose amending the Rules of Procedure with a view to specifying that reservations should only be entered after the end of the Committee's session and, of course, before the expiration of the two-month period specified in Article 8 of the Convention.
8. Finally, the Secretariat is of the view that Rule 20 was intended to set out the procedure for reservations with regard to paragraphs 2 and 3 of Article 8 only and was not designed to deal with the Article 16 Procedure reservations referred to in paragraph 1 of Article 8. Specific provisions in an Article 16 Recommendation against which a reservation has been entered are deleted from the Recommendation and the question is not re-examined unless an administration wishes to do so during the next HS review cycle. The Secretariat would therefore propose the deletion of the reference to paragraph 1 of Article 8 from the existing text of Rule 20.
9. Specifically, the Secretariat would propose to amend Rule 20 of the Rules of Procedure to read as follows :

"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 shall not be submitted before the day following the close of the Committee's session,

but may be submitted until 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.”

### **III. Conclusion**

10. The Committee is invited to examine whether it can agree with the Secretariat that the Committee’s Rules of Procedure should be amended as proposed in paragraph 9 above.
  11. In this connection, the Secretariat draws the Committee’s attention to the fact that, pursuant to Article 6.6 of the HS Convention, amendments to the Rules of Procedure must be approved by not less than two-thirds of the votes attributed to the members of the Committee (i.e., 66). A postal approval procedure will therefore be necessary. Amendments so adopted must also be approved by the Council.
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