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COMMISSION
OF THE
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HARMONIZED COMMODITY DESCRIPTION AND CODING SYSTEM

(Communication from the Commission to the Council)

COM(82) 220 final

S U M M A R Y

1. Since 1973 the Community has been participating in negotiations in the Customs Cooperation Council (CCC) on the development of the so-called Harmonized Commodity Description and Coding System (Harmonized System), a new international goods nomenclature which is intended to be used as a basis for customs tariffs and international trade statistics from 1985 onwards.
2. The Commission has negotiated for the Community under the "ad hoc" procedure and succeeded in getting the majority of the Community's requirements incorporated into the new nomenclature. A problem has, however, arisen concerning the signature of the new convention which will supersede the present CCC Nomenclature Convention.
3. All the Member States are signatories to the existing Convention and the majority are insisting that they should also sign the new agreement (ie that it should be treated as a mixed one) in order to retain 10 votes in the management committee which will supersede the present Nomenclature Committee.
4. It has been indicated that this would jeopardise US acceptance of the Convention which is seen as one of the principal benefits to the Community of adopting the H.S. For legal and political reasons, therefore, it is considered that the new Convention should be signed on behalf of the Community alone.

Harmonized Commodity Description and Coding System

1. Introduction

- 1.1 The Customs Cooperation Council (CCC) has been developing the Harmonized Commodity Description and Coding System, otherwise known as the Harmonized System, since 1973. The system is intended to replace the Customs Cooperation Council Nomenclature (CCCN) as the basis for customs tariffs and international trade statistics. The development work is nearing completion and it is currently envisaged that the Harmonized System will be the subject of a new CCC Convention entering into force on 1.1.85. This Convention will replace the 1950 Convention on Nomenclature for the classification of goods in Customs tariffs to which all Member States are contracting parties.
- 1.2 The Commission was authorized by the Council to negotiate in the CCC on the details of the Harmonized System under the so-called 'ad hoc' procedure. If the Community is to become a contracting party to the proposed new Convention, then a formal decision to this effect by the Council will be required in due course on the basis of a proposal by the Commission. However, discussions on a first draft of a possible future convention have already revealed a problem concerning the signature of the convention. This problem affects the question of votes in the proposed Harmonized System management committee and has an impact on other provisions of the draft convention. The issue therefore needs to be settled if possible before the next discussion of the draft convention in the CCC starting on 17th May 1982.
- 1.3 The purpose of this note is to inform the Council of the current situation regarding the Harmonized System, to seek a decision in principle concerning signature of a future convention and guidance on the conduct of further negotiations on the draft convention.

2. Description of the Harmonized System

- 2.1 The Harmonized System is a nomenclature designed for describing goods in international trade. It consists essentially of two levels of description. The first level is a modernized version of the Customs Cooperation Council Nomenclature and will have some 1200 headings. The second level consists of something over 3,000 subdivisions of the main headings. The whole will provide some 4,500 detailed descriptions of groups or classes of goods, each of which will be identified by a unique 6 digit number. An example is at Annexe A.
- 2.2 The system identifies the 4,500 or so groups or classes of goods which are most commonly traded internationally. It is designed primarily to provide the basis for integrated customs tariffs/trade statistics nomenclatures. Additional detail which may be required by users can be added by making further sub-divisions below the Harmonized System 6-digit level. In addition to its customs/trade

statistics uses, it is expected that parts of the system will be used, in due course, as the basis for transport tariffs and to provide closer correlations between trade and production statistics. It is also expected that producers will incorporate the Harmonized System descriptions and codes into their commercial information systems and quote them on invoices when exporting their goods.

3. Background

- 3.1 The Customs Cooperation Council decided to develop the Harmonized System in 1973 following a two year feasibility study. Pressure to develop such a system came originally from a number of organisations concerned with the facilitation of international trade. They were concerned with the multiplicity of different commodity descriptions and codes used by the many parties - customs, trade statistics, carriers, port authorities, banks, insurance companies, etc. - involved in international trade. These required importers and exporters to redescribe and recode the same goods many different ways in a single international trade transaction and added significantly to the cost of importing and exporting. They were therefore looking for an agreed international standard covering at least the most important classes or groups of goods traded internationally.
- 3.2 The Commission and the Member States supported the project from the outset for two main reasons. Firstly, they saw it as an important trade facilitation measure. Secondly, and equally importantly, they saw the project as a means of bringing the United States and Canada, which are not signatories to the existing Convention and which have entirely different nomenclatures, to adopt the same basis for their customs tariffs and trade statistics as the Community.
- 3.3 The development work has continued since 1973 in the Harmonized System Committee of the CCC. It has been long and painstaking but the Community has managed to have the vast majority of its nomenclature requirements accepted. Community positions have been established in close collaboration between the Commission, the Member States and representatives of European industries. The results of the technical negotiations can therefore be considered satisfactory from a Community point of view.
- 3.4 It was originally envisaged that the new system would be introduced through a CCC Recommendation. Late in the day, the United States representatives took the view that Congress could only be persuaded to approve adoption of the system by the US if it were enshrined in a new CCC Convention. This could then be presented to Congress as an entirely new international instrument developed with the full participation of the US rather than a revamped version of an old European system. A convention would also be more rigorously binding than a recommendation.
- 3.5 The Commission and the Member States have accepted the idea of a new convention and the vast majority of the members of the Harmonized System Committee also support this proposal. However, Member States have been preoccupied with the consequences for voting rights in the management committee which will succeed the Harmonized System Committee.

3.6 All the Member States are currently signatories to the CCCN Convention, which will be replaced by the Harmonized System Convention, and as such each has a vote. For historical reasons, in plenary sessions of the Harmonized System Committee only the Commission, France and the United Kingdom have votes. In the working party of that Committee each delegation present has been allowed to vote. Thus, in theory, the Community has had the right to eleven votes - Commission plus 10 Member States, although in practice the number of delegations present has invariably been lower. The majority of Member States are currently insisting that the Community should, in one way or another, be allowed a number of votes equal to the number of its Member States if it becomes a Party to the new Convention.

3.7 The United States take the view that the Community should have one vote. They have frequently been outvoted on technical matters during the development of the system through the use of the Community's block vote. This is a matter of great concern to officials and Congress is aware of this situation. US negotiators claim that Congress will not approve US acceptance of the new convention unless this unfair situation is corrected. The US considers the Community as a single entity having a common tariff and trade statistics system and sees no reason why the Community's voting power should be ten times as great as its own. They point to the fact that the Community has a single delegation and a single vote in the technical Committee on customs valuation set up in the CCC under the GATT Valuation Agreement and consider that the same situation should prevail in the area of tariff nomenclature. Finally, the US negotiators consider that the acceptance of a single vote is a very small price to pay for the substantial improvements to the US and Canadian tariff nomenclatures which the Community has been seeking for many many years.

4. Participation in the Convention

4.1 The Commission and the Member States have been pressing for a provision in the Convention which will give the Community, and other customs or economic unions, a number of votes equal to the number of Member States. Support for the Community in the Harmonized System Committee on the question of votes has been negligible and it is now recognised that this is not a realistic negotiating position. Member States have, therefore, proposed that they, as well as the Community, should become contracting parties so as to achieve indirectly an objective which cannot be attained directly.

4.2 In examining the question of signature by Member States it is useful to examine four questions. Firstly the legal situation, secondly, the political implications, thirdly the importance of the objective to be achieved and finally representation of the Community in the Harmonized System Management Committee.

4.3 Legal Situation

4.3.1 Although it is expected that the Harmonized System will be widely used by commercial interests, the commitments which contracting parties will be required to enter into relate to nomenclatures for customs tariffs and international trade statistics. Under the Treaty and the jurisprudence of the Court of Justice of the European Community, competence for these matters has passed to the Community. As a consequence, it is no longer open to the Member States to enter into international commitments in their respect.

4.3.2 Certain Member States have argued that the residual Member State competence for ECSC products gives them the right to become contracting parties. It should not be overlooked, however, that:

- The nomenclature laid down in the ECSC Treaty is not used for the purposes of the Common Customs Tariff or NIMEXE. The nomenclature has been transposed into these two instruments and will, similarly, be transposed into a new Community customs tariff/trade statistics nomenclature based upon the Harmonized System.
- The borderlines between ECSC and EEC products are often very fine and depend upon technical criteria not necessarily found in the Harmonized System. When nomenclature questions relating to coal or steel products are being examined in the Harmonized System Committee it will often be impossible in practice to make a distinction between EEC and ECSC products.

4.4 Political implications. The idea that the Member States should sign the Convention in order to obtain 10 votes has political implications which make it unacceptable to the Commission.

4.4.1 Firstly, to accept such an approach would be to disregard a key area of the Customs Union. A common customs tariff was introduced in 1968 after many years of great effort. This is a fundamental instrument of the Customs Union which is a cornerstone of the Community. The Community negotiates its common tariff in the GATT and in its bilateral and plurilateral agreements and subsequently enters into tariff agreements as a single body. This approach has never been questioned in these contexts. To accept that the Community should appear as 10 independent states in a new convention relating to tariff nomenclatures in the Customs Cooperation Council is inconsistent with the principle of a common customs tariff and trade statistics system. Signature by the Community alone would not, however, prejudice the right of the Member States to vote in plenary sessions of the Customs Cooperation Council (see paragraph 5.3.2.).

4.4.2 Secondly, the question of votes raises political problems vis-à-vis the United States as previously indicated. One of the benefits of the implementation of the Harmonized System will be that the United States will base its customs tariff and trade statistics nomenclatures on the same international nomenclature as the Community. The complexities of the current US tariff and its lack of clear explanatory notes have been a source of great difficulty for Community exporters. At present, the Community has no say in US tariff classification decisions whereas under the new Convention decisions, at least at the level of the Harmonized System, will be open to international review in the Harmonized System Committee. In return for this benefit the US is seeking merely a parity in voting rights with the Community. This problem was recently discussed once again with senior US officials in the light of Member State reactions to the draft Harmonized System Convention. They emphasized the commitment of the US Administration to the adoption of the Harmonized System but stressed the difficulties which they are having in obtaining political support for the complete change in the US tariff and trade statistics schedules which its adoption implies. They were sympathetic to the concerns of the Member States over the potential loss of votes but saw no way in which Congress could be persuaded to adopt the Harmonized System unless the United States had a similar status in the Harmonized System Committee, including similar voting rights, to the Community.

4.5. Importance: In the absence of a consensus, the Harmonized System Committee may be expected to take votes on three matters - the classification of goods within the system, the adoption of explanatory notes, and proposals to amend the nomenclature and its legal notes.

4.5.1 Classification decisions and Explanatory Notes:

The Community will, like other contracting parties, be inconvenienced if a classification decision or an explanatory note adopted in the CCC is not consistent with its current tariff situation. It will be free, however, to adjust its tariff by introducing new subheadings so as to avoid any consequences which are considered unacceptable. This is what is done currently if decisions of the present CCC Nomenclature Committee or the European Court of Justice produce results inconsistent with Community policy requirements.

4.5.2 Amendments: So far as proposed amendments are concerned, it is envisaged that the new convention will contain a provision, similar to the one in the present CCC Nomenclature Convention, which enables any contracting party to prevent the adoption of any proposed amendment to the nomenclature or legal notes which is objectionable:

The Commission sympathises with the desire of the Member States to have ten votes and agrees that in some areas of international negotiations there may be overwhelming grounds for ensuring that the voting power of the Member States is not diminished by participation as Community. However, in the case of the proposed Harmonized System Convention it is impossible to argue, given the situation outlined above, that ten votes are essential to protect important Community interests.

4.6 Representation If the new convention were signed on behalf of the Community alone this would not mean that Member States experts would be excluded in future from participation in the work of the Harmonized System management committee. The situation would be similar to that at present under the 'ad hoc' procedure. Common positions would be arrived at in preparatory meetings between the Commission and the Member States. These positions would be presented by a spokesman who would normally be the Commission representative. When a Member State representative had a particular interest or expertise he could, by common accord, present the Community position. In working parties, where delegates were required to present arguments based upon their experience or special expertise, Member State experts could, once again by common accord, participate freely. A common position would only be required where decisions affecting the Community tariff or statistical system were to be taken. Such an arrangement has worked satisfactorily for nearly two years for the preparation of and representation of the Community in meetings of the Technical Committee on Customs Valuation of the CCC.

5. Conclusion

5.1 Once the negotiations are completed the Commission expects to propose to the Council that the Community should become a contracting party to a new convention on the Harmonized System. This convention will commit the Community to use the Harmonized System as the basis for a new integrated customs tariff/statistical nomenclature. The Commission will also have to seek authorisation to undertake consequential negotiations of the Community's GATT tariff schedules. The Commission will only make its proposals if and when it is satisfied that the Community's major trading partners are also prepared to become contracting parties to the proposed new convention with the same obligations as the Community.

5.2 In order to continue the negotiations on the draft Harmonized System Convention the Commission needs further guidance from the Council on the direction to be followed. The Commission fully recognises that in some international fora the question of the voting strength of the Community is of great economic or political importance. However, in the case of the Harmonized System management committee the question of votes is of lesser significance. The questions dealt with are largely technical ones, as in the case of the CCC's Technical Committee on Customs Valuation where the Community has a single delegation with one vote. In these circumstances, it is not realistic to expect that the Community should receive ten votes under the new convention. The Commission proposes, therefore, that the Council should decide that in the event of the Community deciding to become a contracting party to a convention on the Harmonized System which committed it to using the Harmonized System as the basis for an integrated customs tariff/trade statistics nomenclature, the Convention would be signed on behalf of the Community alone.

Such a decision would of course, be without prejudice to decisions on the question of signature of other agreements where the question of votes may be of greater economic or political significance.

5.3 Even if the agreement is to be signed on behalf of the Community it may be possible to negotiate provisions in the new Convention which would, to some extent, offset the loss of votes. The main possibilities are as follows:

5.3.1 Weighted voting. An attempt could be made to introduce a system of weighted voting. It would, however, probably be difficult to find a generally acceptable basis for the weighting of votes and the possibilities would have to be discussed widely with both developed and developing countries before any firm proposals were made.

5.3.2 Role of CCC Council. Under one version of the current draft of the new convention, the Harmonized System Convention is to be supervised by the CCC. The Convention setting up the Customs Cooperation Council provides that each signatory has a vote in matters which concern it. This will not be affected by the Harmonized System Convention and all Member States will continue to have their votes in the Council of the CCC. The version which places the Harmonized System under the supervision of the Council of the CCC has considerable support amongst the partners to the negotiations on the Harmonized System other than the United States who are pressing

for an autonomous convention. It may be possible to negotiate provisions under which all decisions of the Harmonized System Committee are subject to approval of the Council of the CCC. If this can be achieved then the Member States will have a great deal of influence over the ultimate decisions on all matters concerning the Harmonized System.

5.3.3 Consensus. The Community and the United States would be on the same footing if decisions were taken by consensus in the Harmonized System Committee i.e. no signatory would have a vote. Since, however, the Committee will be dealing with a large volume of highly technical questions there is a serious risk that all progress will be blocked if a consensus has to be reached before any decision can be taken. Such an approach should, therefore, only be contemplated as a last resort.

5.4 The Council is invited to :

- 5.4.1 Approve the Commission's position that the Community alone should be the signatory to the proposed Harmonized System Convention, and
- 5.4.2 Note the Commission's intention to explore the possibilities of negotiation outlined at paragraph 5.3.

<u>Code number</u>		
<u>CCCN</u>	<u>H.S.</u>	<u>Title</u>
<u>70.01</u>	7001.00	<u>Cullet and other waste and scrap of glass; glass in the mass.</u>
<u>70.02</u>		<u>Glass in balls (other than microspheres of heading No. 70.18), rods or tubes, unworked.</u>
	7002.10	- Glass in balls
	7002.20	- Rods
		- Tubes :
	7002.31	-- Of fused quartz or other fused silica
	7002.32	-- Of other glass having a linear coefficient of expansion not exceeding 5×10^{-6} per Kelvin within a temperature range of 0°C to 300°C
	7002.39	-- Other
<u>70.03</u>		<u>Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent or reflecting layer, but not otherwise worked.</u>
		- Non-wired sheets :
	7003.11	-- Coloured throughout the mass (body tinted), opacified, flashed or having an absorbent or reflecting layer
	7003.19	-- Other
	7003.20	- Wired sheets
	7003.30	- Profiles
<u>70.04</u>		<u>Drawn glass and blown glass, in sheets, whether or not having an absorbent or reflecting layer, but not otherwise worked.</u>
	7004.10	- Glass, coloured throughout the mass (body tinted), opacified, flashed or having an absorbent or reflecting layer
	7004.90	- Other glass