Council Decision (EU) 2020/1410 of 25 September 2020 on the position to be taken, on behalf of the European Union, in the 66th session of the Harmonized System Committee of the World Customs Organization in relation to the envisaged adoption of Classification opinions, classification decisions, amendments to the Harmonized System Explanatory Notes or other advice on the interpretation of the Harmonized System, and of recommendations to secure uniformity in the interpretation of the Harmonized System under the Harmonized System Convention

COUNCIL DECISION (EU) 2020/1410

of 25 September 2020

on the position to be taken, on behalf of the European Union, in the 66th session of the Harmonized System Committee of the World Customs Organization in relation to the envisaged adoption of Classification opinions, classification decisions, amendments to the Harmonized System Explanatory Notes or other advice on the interpretation of the Harmonized System, and of recommendations to secure uniformity in the interpretation of the Harmonized System under the Harmonized System Convention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 31, Article 43(2) and Article 207(4), first subparagraph, thereof, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Decision 87/369/EEC[(1)], the Union approved the International Convention on the Harmonized Commodity Description and Coding System[(2)], and the Protocol of Amendment thereto[(3)] (HS Convention), which established the Harmonized System Committee (HSC).

(2) Pursuant to points (b) and (c) of Article 7(1) of the HS Convention, the HSC is, inter alia, responsible for preparing Explanatory Notes, Classification Opinions, other advice on the interpretation of the Harmonized System and for preparing recommendations to secure uniformity in the interpretation and application of the Harmonized System.

(3) The HSC is expected to decide on Classification Opinions, classification decisions, amendments to the Explanatory Notes or other advice on the interpretation of the Harmonized System and to decide on recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention at its September 2020 session.

(4) It is important to recall that, according to the settled case-law of the Court of Justice of the European Union, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is, in general, to be sought in their objective characteristics and properties as defined in the wording of

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2020/1410. (See end of Document for details)*

the relevant heading of the customs nomenclature and the relative section and chapter notes.

(5) In view of the Classification Opinions, classification decisions, amendments to the Explanatory Notes or other advice on the interpretation of the Harmonized System, and of recommendations to secure uniformity in the interpretation of the HS Convention, it is appropriate to establish the position to be taken on the Union's behalf, because, once accepted, those Classification Opinions, and certain of those classification decisions and amendments will be published in a Commission Communication under point (a)(iii) of Article 34(7) of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(4)], and become applicable to Member States. The position will be expressed at the HSC,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, in the 66th session of the Harmonized System Committee of the World Customs Organization on the approval of Explanatory Notes, Classification Opinions or other advice on the interpretation of the Harmonized System and of recommendations to secure uniformity in the interpretation of the Harmonized System under the HS Convention, is set out in the Annex.

Article 2

Minor technical changes to the position referred to in Article 1 may be agreed upon by the representatives of the Union without further decision of the Council.

Article 3

This Decision shall enter into force on the date of its adoption.

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2020/1410. (See end of Document for details)*

[X1ANNEX

Editorial Information

X1 Substituted by Corrigendum to Council Decision (EU) 2020/1410 of 25 September 2020 on the position to be taken, on behalf of the European Union, in the 66th session of the Harmonized System Committee of the World Customs Organization in relation to the envisaged adoption of Classification opinions, classification decisions, amendments to the Harmonized System Explanatory Notes or other advice on the interpretation of the Harmonized System, and of recommendations to secure uniformity in the interpretation of the Harmonized System under the Harmonized System Convention (Official Journal of the European Union L 327 of 8 October 2020).

IV.REPORT OF THE SCIENTIFIC SUB-COMMITTEE: Doc. NS0456Eb (SSC/35 - report)

(1) Matters for decision (doc. NC2708Ea)

(a) Annexes A/1 and C/1 – Classification of new INN products (List 120). The Union shall approve the 125 classifications (HS 2017 Edition) and the three consequential reclassifications (HS 2022 Edition) recommended by the Scientific Sub-Committee.

(b) Annexes A/2 and C/2 – Classification of new INN products (List 121). The Union shall approve the 143 classifications (HS 2017 Edition) and the 15 consequential reclassifications (HS 2022 Edition) recommended by the Scientific Sub-Committee.

(c) Annexes A/3 and C/3 – Possible reclassification of certain INN products consequential upon the Article 16 Recommendation of 23 June 2019. The Union shall approve the consequential (HS 2022 Edition) reclassifications of the 143 INN products agreed to by the Scientific Sub-Committee.

(d) Annexes B/1 and C/6 – Decisions taken by the HS Committee at its 63rd and 64th Sessions and the WCO Council at its 133rd/134th Sessions, affecting the work of the Scientific Sub-Committee. The Union shall approve the reclassifications of ‘zilucoplan’ and ‘etryptamine’ agreed by the Scientific Sub-Committee, in subheadings 2933.79 and 2939.80, respectively.

The Union shall agree to all proposed classifications as they are in line with the current classification policy in the Union.

(2) Possible amendment of the Explanatory Notes to Chapter 29 in respect to the list of narcotic drugs, psychotropic substances and precursors Doc. NC2738Ea

The Union shall agree to the proposal to amend the HSEN to Chapter 29, in line with the advice of the Scientific Sub-Committee.

V. REPORT OF THE HS REVIEW SUB-COMMITTEE (Doc. NR1403E)

(1) Matters for decision (Doc. NC2709Ea)

(a) Annexes D/6 and G/11 – Possible amendment to the Explanatory Note to heading 85.24 (HS 2022)

(b) Annexes D/7 and G/12 – Possible amendments to the HS 2022 Explanatory Notes in respect of 3D printers

(c) Annexes E/14 and G/19 – Amendment to the Explanatory Notes to heading 70.19 in respect of glass fibres (HS 2022)

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2020/1410. (See end of Document for details)*

(d) Annexes E/1 to E/6, E/8 to E/13, E/15 to E/18, E/20, E/23 and G/1 to G/6, G/8, G/13 to G/18, G/21, G/22, G/24, G/27 – Possible amendment to the Explanatory Note to Sections I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XX and XXI.

(e) Annexes E/23 and G/27 – Amendments to the Explanatory Notes to Chapter 97 in respect of certain cultural articles (HS 2022)

(f) Annexes E/24 and G/28 – Amendments to the Explanatory Notes (GIRs)

The Union shall agree to all proposed amendments in the documents as they reflect the current classification policy in the Union.

(2) Classification in HS 2022 of certain disposable or rechargeable personal electric vaporisers (Request by the Secretariat) Doc. NC2710Eb

The Union would classify product 1 in subheading 8543.70 in the HS2017 and in subheading 8543.40 in the HS2022. Product 2 shall be classified in heading 24.04 in the HS2022 using GIR 3(b), based on the essential character conferred by the e-liquid.

(3) Classification in HS 2022 of certain collections and collectors' pieces of numismatic interest (Request by the Secretariat) Doc. NC2711Ea

The Union shall express the need for additional information on the products to determine classification.

The Union shall not agree with the proposal for amending the HSEN, pending clarification and guidance on how to differentiate between the new subheadings under heading 97.05.

(4) Classification in HS 2022 of cartridges for 3D printers (Request by the Secretariat) Doc. NC2712Ea

The Union would classify the products in Chapter 39 according to the constituent material, in line with the ruling of the Court of Justice of the European Union in Case C-276/00. Additional information is needed to classify the products at subheading level. The proposed amendment to the HSEN shall not be supported, as the current practice in the Union is not to classify printer cartridges as parts of printers.

(5) Classification in HS 2022 of a sheet lamination machine for additive manufacturing doc. NC2744Ea

The Union would classify the product in heading 84.85 (option II).

VI. REPORT OF THE PRESESSIONAL WORKING PARTY Doc. NC2714Ea and Annexes A to T

Subject to some editorial suggestions, the Union shall adopt the text presented in Annexes A to T with the following remarks:

(1) Amendment to the Compendium of Classification Opinions to reflect the decision to classify a product in heading 18.06 (subheading 1806.32)

The Union shall suggest to delete the list of ingredients, not necessary for classification purposes.

(2) Amendment to the Compendium of Classification Opinions to reflect the decision to classify two kinds of tobacco stems ('Cut rolled expanded stem tobacco (CRES)' and 'Expanded tobacco stems (ETS)') in heading 24.03 (subheading 2403.99)

***Changes to legislation:** There are currently no known outstanding effects for the Council Decision (EU) 2020/1410. (See end of Document for details)*

The Union shall insist to keep the text 'cannot be smoked directly' as it was the decisive criterion for classification.

(3) Amendment to the Compendium of Classification Opinions to reflect the decision to classify Solid Oxide Fuel Cells (SOFC) in heading 85.01 (subheading 8501.62)

The Union shall suggest using the product description from the boxed text of the initial working document (doc. NC2655E1b).

VII. REQUESTS FOR RE-EXAMINATION (RESERVATIONS)

(1) Re-examination of the classification of certain dietary sip feeds (Products 1 to 5) (Request by the United States) Doc. NC2715Ea

The Union would classify the products as beverages in heading 22.02, in line with the ruling of the Court of Justice of the European Union in Case C-114/80 and Classification Opinions 2202.99/2-4.

(2) Re-examination of the classification of a GPS running watch with wrist-based heart rate monitor (Requests by the United States and Japan) Doc. NC2716Ea

The Union would classify the product in subheading 9102.12 as a wrist-watch, in line with the CNEN for heading 91.02.

(3) Re-examination of the classification of Sterilizer (Request by Ukraine) Doc. NC2717Ea

The Union would classify the product in heading 84.19, as it is a specific heading for sterilisers. The change in temperature takes place and has an important effect on the sterilising process. The apparatus does not fulfil any mechanical functions.

(4) Re-examination of the classification of two products called 'RF Generators and RF Matching Networks' (Request by South Korea) Doc. NC2718Ea, NC2745Eb, NC2747Ea

The Union would classify the products in heading 84.86 because they are identifiable machines used solely or principally for the manufacture of semiconductor devices.

VIII. FURTHER STUDIES

(1) Classification of edible insects (Proposal by the Secretariat) Doc. NC2719Ea

The Union shall support possible transfers from both headings 02.10 and 04.10 for product 1. Product 2 could be transferred either from heading 04.10 or Chapter 16. Product 3 could be transferred from Chapter 16. Product 4 could be transferred either from Chapter 16 or 21.

(2) Possible amendment of the Explanatory Note to heading 27.11 to clarify the classification of liquefied petroleum gas (LPG) (Proposal by the Secretariat) Doc. NC2720Ea

The Union shall support the creation of a subheading Explanatory Note to subheading 2711.19.

(3) Amendment of the Explanatory Notes to Rule 3 (b) to clarify the classification of sets Doc. NC2721Ea

The Union shall support keeping the *status quo* and current classification practices.

(4) Possible amendment of the Explanatory Note to heading 91.02 Doc. NC2722Ea

The Union would prefer to wait for a definitive decision on the classification in point VII.2 before advancing with amending the HSEN.