1. With effect from 1 January 1988, most participants in the International Dairy Arrangement have implemented the new Commodity Description and Coding System (Harmonized System) established by the Customs Co-operation Council in Brussels, which is intended to serve as a single nomenclature standard for the classification of traded goods. Other participants are expected to implement the new system shortly.

2. Copies of the relevant pages of the new Commodity Description and Coding System are enclosed in Annex I to this note.

3. Some changes have been made in the description and coding of products covered by the International Dairy Arrangement, and it may consequently be appropriate to consider whether changes or modifications will have to be made in the Arrangement. It is notably PART ONE - GENERAL PROVISIONS - Article II - Product Coverage and, PART ONE - Article 1 - Product Coverage of each of the Protocols that would need to be examined. The texts of these articles are reproduced in Annex II.

4. The secretariat has prepared this note merely to facilitate the Council's consideration of the matter at its eighteenth session.

5. There seems to be two possible ways of handling the matter:

   (i) by a decision of the Council taken in conformity with PART THREE - Article VII:1(c) to make the necessary changes in the relevant Articles; or,

   (ii) by amendment made in conformity with PART FOUR - Article VIII - Final Provisions, paragraph 5.
6. The particular situation which has occurred was apparently not foreseen by the drafters and the text of the Arrangement may not give an absolutely clear indication for how to deal with the matter. However, under Article II:2, "the Council may decide that the Arrangement is to apply to other products" - if this is deemed "necessary for the implementation of the objectives and provisions of this Arrangement". It might be reasonable to assume that it would be within the competence of the Council to redefine the product coverage through a decision taken in conformity with Article VII:1(c), in other words by consensus, if this is deemed necessary for the implementation of the provisions of the Arrangement. Care should be taken that the product coverage is not thereby reduced.

7. The advantage of procedure (i) is its simplicity and that a decision might be taken rapidly. Procedure (ii), to make an amendment in conformity with Article VIII:5 will require the acceptance by the governments of all participants and obviously take more time. The Council must then adopt a proposed amendment and recommend its acceptance by participants, and take a decision to that effect in conformity with Article VII:1(c).

8. A draft model decision is attached as Annex III to the present note.

9. Finally, the Council may have to take a decision or adopt an understanding regarding the situation of participants which may not have implemented the Harmonized System at the time the change in the relevant Articles will take effect.
ANNEX I

CHAPTER 4

DAIRY PRODUCE; BIRDS' EGGS;
NATURAL HONEY;
EDIBLE PRODUCTS OF ANIMAL ORIGIN,
NOT ELSEWHERE SPECIFIED OR INCLUDED

Chapter Notes.
1. The expression "milk" means full cream milk or partially or completely skimmed milk.
2. Products obtained by the concentration of whey and with the addition of milk or milkfat are to be classified as cheese in heading No. 04.06 provided that they have the three following characteristics:
   (a) a milkfat content, by weight of the dry matter, of 5% or more;
   (b) a dry matter content, by weight, of at least 70% but not exceeding 85%; and
   (c) they are moulded or capable of being moulded.

GENERAL

This Chapter covers:
(I) Dairy products:
   (A) Milk, i.e., full cream milk and partially or completely skimmed milk.
   (B) Cream.
   (C) Buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream.
   (D) Whey.
   (E) Products consisting of natural milk constituents, not elsewhere specified or included.
   (F) Butter and other fats and oils derived from milk.
   (G) Cheese and curd.

The products mentioned at Items (A) to (E) above may contain, in addition to natural milk constituents (e.g., milk enriched in vitamins or mineral salts), small quantities of stabilising agents which serve to maintain the natural consistency of the product during transport in liquid state (disodium phosphate, trisodium citrate and calcium chloride, for instance) as well as very small quantities of anti-oxidants or of vitamins not normally found in the product. Certain of these products may also contain small quantities of chemicals (e.g., sodium bicarbonate) necessary for their processing; products in the form of powder or granules may contain anticaking agents (for example, phospholipids, amorphous silicon dioxide).

On the other hand, the Chapter excludes, inter alia, the following:
(a) Lactose (milk sugar) (heading 17.02).
(b) Food preparations based on dairy products (in particular, heading 19.01).
(c) Products obtained from milk by replacing one or more of the natural constituents (e.g., butyric fats) by another substance (e.g., oleic fats) (heading 19.01 or 21.06).
(d) Ice cream and other edible ice (heading 21.05).
(e) Medicaments of Chapter 30.
(f) Casein (heading 35.01), milk albumin (heading 35.02) and hardened casein (heading 39.13).

(II) Birds' eggs and egg yolks.
(III) Natural honey.
(IV) Edible products of animal origin, not elsewhere specified or included.
04.01 - MILK AND CREAM, NOT CONCENTRATED NOR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER.

0401.10 - Of a fat content, by weight, not exceeding 1 %

0401.20 - Of a fat content, by weight, exceeding 1 % but not exceeding 6 %

0401.30 - Of a fat content, by weight, exceeding 6 %

This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurised, sterilised or otherwise preserved, homogenised or peptonised; but it excludes milk and cream which have been concentrated or which contain added sugar or other sweetening matter (heading 04.02) and curdled, fermented or acidified milk and cream (heading 04.03).

The products of this heading may be frozen and may contain the additives referred to in the General Explanatory Note to this Chapter. The heading also covers reconstituted milk and cream having the same qualitative and quantitative composition as the natural products.

04.02 - MILK AND CREAM, CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER (+).

0402.10 - In powder, granules or other solid forms, of a fat content, by weight, not exceeding 1.5 %

- In powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 %:

0402.21 - Not containing added sugar or other sweetening matter

0402.29 - Other

- Other:

0402.91 - Not containing added sugar or other sweetening matter

0402.99 - Other

This heading covers milk (as defined in Note 1 to this Chapter) and cream, concentrated (for example, evaporated) or containing added sugar or other sweetening matter, whether liquid, paste or solid (in blocks, powder or granules) and whether or not preserved or reconstituted.

Milk powder may contain small quantities of starch (not exceeding 5 % by weight), added, in particular, to maintain the reconstituted milk in its normal physical state.

The heading does not cover:

(a) Curdled, fermented or acidified milk or cream (heading 04.03).

(b) Beverages consisting of milk flavoured with cocoa or other substances (heading 22.02).

Subheading Explanatory Note.

Subheadings 0402.10, 0402.21 and 0402.29

These subheadings do not cover concentrated milk or cream in the form of paste (subheadings 0402.91 and 0402.99).
04.03 - BUTTERMILK, CURDLED MILK AND CREAM, YOGURT, KEPHIR AND OTHER FERMENTED OR ACIDIFIED MILK AND CREAM, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR FLAVOURED OR CONTAINING ADDED FRUIT OR COCOA.

0403.10 - Yogurt

0403.90 - Other

This heading covers buttermilk, and all fermented or acidified milk and cream and includes curdled milk and cream, yogurt and kephir. The products of this heading may be in liquid, paste or solid (including frozen) form and may be concentrated (e.g., evaporated or in blocks, powder or granules) or preserved.

Fermented milk of this heading may consist of milk powder of heading 04.02 containing small quantities of added lactic ferments, with a view to its use in prepared meat products or as an additive for animal feed.

Acidified milk of this heading may consist of milk powder of heading 04.02 containing small quantities of added acid (including lemon juice) in crystal form in order to produce curdled milk on reconstitution with water.

Apart from the additives mentioned in the General Explanatory Note to this Chapter, the products of this heading may also contain added sugar or other sweetening matter, flavourings, nuts, fruit (including pulp and jams) or cocoa.

04.04 - WHEY, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER; PRODUCTS CONSISTING OF NATURAL MILK CONSTITUENTS, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER, NOT ELSEWHERE SPECIFIED OR INCLUDED.

0404.10 - Whey, whether or not concentrated or containing added sugar or other sweetening matter

0404.90 - Other

This heading covers whey (i.e., the natural constituents of milk which remain after the fat and casein have been removed). Whey may be in liquid, paste or solid (including frozen) form, whether or not part of the lactose or some minerals have been removed, and may be concentrated (e.g., in powder) or preserved.

The heading also covers fresh or preserved products consisting of milk constituents, which do not have the same composition as the natural product, provided they are not more specifically covered elsewhere. Thus the heading includes products which lack one or more natural milk constituents, milk to which natural milk constituents have been added (to obtain, for example, a protein-rich product).

Apart from natural milk constituents and the additives mentioned in the General Explanatory Note to this Chapter, the products of this heading may also contain added sugar or other sweetening matter.

The powdered products of this heading, particularly whey, may contain small quantities of added lactic ferments, with a view to their use in prepared meat products or as additives for animal feed.

The heading does not cover:

(a) Skimmed milk or reconstituted milk having the same qualitative and quantitative composition as natural milk (heading 04.01 or 04.02).
(b) Whey cheese (heading 04.06).
(c) Food preparations based on natural milk constituents but containing other substances not allowed in the products of this Chapter (in particular, heading 19.01).
04.05 • BUTTER AND OTHER FATS AND OILS DERIVED FROM MILK.

This heading applies to natural butter (fresh or salted, including canned butter) and other fats and oils derived from milk (e.g., milkfat, butterfat, butteroil). Butteroil is the product obtained by extracting the water and non-fat content from butter or cream.

It also includes resolidified butter (beurre fondu), dehydrated butter, ghee (a kind of butter made most commonly from the milk of buffaloes or cows), rancid butter and fractionated butterfat.

04.06 • CHEESE AND CURD.

0406.10 • Fresh cheese (including whey cheese), not fermented, and curd

0406.20 • Grated or powdered cheese, of all kinds

0406.30 • Processed cheese, not grated or powdered

0406.40 • Blue-veined cheese

0406.90 • Other cheese

This heading covers all kinds of cheese, viz.:
(1) Unfermented fresh cheese (including cheese made from whey or buttermilk) and curd.
(2) Grated or powdered cheese.
(3) Processed cheese, also known as process cheese. It is manufactured by comminuting, mixing, melting and emulsifying, with the aid of heat and emulsifying or acidifying agents (including melting salts), one or more varieties of cheese and one or more of the following: cream or other dairy products, salt, spices, flavouring, colouring and water.
(4) Blue-veined cheese (e.g., Roquefort, Gorgonzola).
(5) Soft cheese (e.g., Camembert, Brie).
(6) Fermented fresh (cream) cheese.
(7) Medium-hard cheese and hard cheese (e.g., Cheddar, Gouda, Gruyère, Parmesan).

Whey cheeses are obtained by concentrating whey and adding milk or milk fat. They are classified in this heading only if they have the three following characteristics:
(a) a milkfat content, by weight of the dry matter, of 5% or more;
(b) a dry matter content, by weight, of at least 70% but not exceeding 85%;
(c) they are moulded or capable of being moulded.

The presence of meat, herbs, spices, vegetables, fruit, nuts, vitamins, skimmed milk powder, etc., does not affect classification provided that the goods retain the character of cheese.
CHAPTER 35

ALBUMINOIDAL SUBSTANCES; MODIFIED STARCHES; GLUES; ENZYMES

Chapter Notes.

1.- This Chapter does not cover:

(a) Yeasts (heading No. 21.02);
(b) Blood fractions (other than blood albumin not prepared for therapeutic or prophylactic uses), medicaments or other products of Chapter 30;
(c) Enzymatic preparations for pre-tanning (heading No. 32.02);
(d) Enzymatic soaking or washing preparations or other products of Chapter 34;
(e) Hardened proteins (heading No. 39.13); or
(f) Gelatin products of the printing industry (Chapter 49).

2.- For the purposes of heading No. 35.05, the term "dextrins" means starch degradation products with a reducing sugar content, expressed as dextrose on the dry substance, not exceeding 10%.

Such products with a reducing sugar content exceeding 10% fall in heading No. 17.02.

35.01 - CASEIN, CASEINATES AND OTHER CASEIN DERIVATIVES; CASEIN GLUES.

3501.10 - Casein

3501.90 - Other

(A) Casein and casein derivatives.

(1) Casein is the main protein constituent of milk. It is obtained from skimmed milk by precipitation (curdling), generally with acids or rennet. The heading covers various types of casein which differ according to the method of curdling, e.g., acid casein, cascinogen and rennet casein (paracasein).

Casein is usually a yellowish-white granular powder, soluble in alkalis but not in water. It is used mainly in the preparation of glues, paints or distempers, for the coating of papers, and in the manufacture of casein plastics (hardened casein), man-made fibres, dietary or pharmaceutical products.

(2) Caseinates (salts of casein) include the sodium and ammonium salts known as "soluble caseins"; these salts are normally used to prepare concentrated foods and pharmaceutical products. Calcium caseinate is used in the preparation of foodstuffs or as a glue, according to its character.

(3) Other casein derivatives include, in particular, chlorinated casein, brominated casein, iodised casein and casein tannate. They are used in pharmacy.

(B) Casein glues.

These consist of calcium caseinate (see Note on caseinates above), or of mixtures of casein and chalk with the addition of, for example, small quantities of borax or ammonium chloride. They are usually in the form of powders.

The heading does not include:

(a) Precious metal caseinates (heading 28.43) or caseinates of headings 28.44 to 28.46.
(b) Products incorrectly described as "vegetable casein" (heading 35.04).
(c) Casein glues put up for retail sale, not exceeding a net weight of 1 kg (heading 35.06).
(d) Hardened casein (heading 39.13).
ANNEX II

Article II - Product Coverage

1. This Arrangement applies to the dairy products sector. For the purpose of this Arrangement, the term "dairy products" is deemed to include the following products, as defined in the Customs Co-operation Council Nomenclature:

   (a) Milk and cream, fresh, not concentrated or sweetened 04.01
   (b) Milk and cream, preserved, concentrated or sweetened 04.02
   (c) Butter 04.03
   (d) Cheese and curd 04.04
   (e) Casein ex 35.01

2. The International Dairy Products Council established in terms of Article VII:1(a) of this Arrangement (hereinafter referred to as the Council) may decide that the Arrangement is to apply to other products in which dairy products referred to in paragraph 1 of this Article have been incorporated if it deems their inclusion necessary for the implementation of the objectives and provisions of this Arrangement.

PROTOCOL REGARDING CERTAIN MILK POWDERS

PART ONE

Article 1 - Product Coverage

1. This Protocol applies to milk powder and cream powder falling under CCCN heading No. 04.02, excluding whey powder.

PROTOCOL REGARDING MILK FAT

PART ONE

Article 1 - Product Coverage

1. This Protocol applies to milk fat falling under CCCN heading No. 04.03, having a milk fat content equal to or greater than 50 per cent by weight.

PROTOCOL REGARDING CERTAIN CHEESES

PART ONE

Article 1 - Product Coverage

1. This Protocol applies to cheeses falling under CCCN heading No. 04.04, having a fat content in dry matter, by weight, equal to or more than 45 per cent and a dry matter content, by weight, equal to or more than 50 per cent.
ANNEX III

Draft Model Decision

At its [eighteenth session on 23 March 1988], the International Dairy Products Council noted that most participants had already implemented the new Commodity Description and Coding System (Harmonized System) from 1 January 1988, and that other participants were expected to implement the new system shortly.

The Council [agreed:] [considered it appropriate to recommend an amendment to be made in Article II:1 of the Arrangement and in Article 1 of each of the Protocols, and that in accordance with Article VIII:5 of the Arrangement; the governments of all participants were invited to accept:]

- that Article II:1 of the International Dairy Arrangement should read as follows:

"Article II - Product Coverage

1. This Arrangement applies to the dairy products sector. For the purpose of this Arrangement, the term "dairy products" is deemed to include the following products, as defined in the new Commodity Description and Coding System (Harmonized System) established by the Custom's Co-operation Council.

   CCCN (revised)

   (a) 04.01.10-30 Milk and cream, not concentrated nor containing added sugar or other sweetening matter

   (b) 04.02.10-99 Milk and cream, concentrated or containing added sugar or other sweetening matter

   (c) 04.03.10-90 Buttermilk, curdled milk and cream, yoghurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit or cocoa

   (d) 04.04.10-90 Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included

   (e) 04.05.00 Butter and other fats and oils derived from milk

   (f) 04.06.10.90 Cheese and curd

   (g) 35.01.10 Casein";
- that Article 1 of the Protocol Regarding Certain Milk Powders should read as follows:

"Article 1 - Product Coverage
1. This Protocol applies to milk powder and cream powder falling under CCCN (revised) headings Nos. 04.02.10-90 and 04.03.10-90."

- that Article 1 of the Protocol Regarding Milk Fat should read as follows:

"Article 1 - Product Coverage
1. This Protocol applies to milk fat falling under CCCN (revised) heading No. 04.05.00, having a milk fat content equal to or greater than 50 per cent by weight."

- and, that Article 1 of the Protocol Regarding Certain Cheeses should read as follows:

"Article 1 - Product Coverage
1. This Protocol applies to cheeses falling under CCCN (revised) heading No. 04.06.10-90, having a fat content in dry matter, by weight, equal to or more than 45 per cent and a dry matter content, by weight, equal to or more than 50 per cent."