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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN
INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR
THE APPLICATION OF THE PRIOR INFORMED CONSENT
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND
PESTICIDES IN INTERNATIONAL TRADE

Eighth session

Rome, 8-12 October 2001

Item 5 (e) of the provisional agenda*

PREPARATION FOR THE CONFERENCE OF THE PARTIES

ASSIGNMENT OF SPECIFIC HARMONIZED SYSTEM CUSTOMS CODES

Note by the secretariat

I. BACKGROUND

1. Article 13, paragraph 1 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade provides:

"The Conference of the Parties shall encourage the World Customs Organization to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III, as appropriate. Each Party shall require that, whenever a code has been assigned to such a chemical, the shipping document for that chemical bears the code when exported."

2. The Intergovernmental Negotiating Committee, at its sixth session, invited the secretariat to report on progress made by the secretariats of the Montreal Protocol on Substances that Deplete the Ozone Layer and of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in assigning Harmonized System (HS) customs codes. The secretariats of those two conventions provided reports on their progress in and experiences with the use of HS customs codes. Those reports were provided to the Committee at its seventh session as annexes II and III to UNEP/FAO/PIC/INC.7/INF/3.

* UNEP/FAO/PIC/INC.8/1.

3. The Committee, at its sixth session, also invited the secretariat and the chair to initiate contacts with the World Customs Organization (WCO). The secretariat was requested, in addition, to report to the Committee at its following session on the outcome of those contacts.
4. In a letter dated 25 January 2000, WCO enthusiastically welcomed the provision in the Convention for the assignment of specific customs codes to individual chemicals listed in Annex III, opining that such a measure would facilitate application of the Convention greatly, and invited the secretariat to send a formal request to WCO asking for the assignment of relevant HS code numbers. Such a request was sent to WCO on 1 March 2000. In a letter dated 14 April 2000, WCO responded with an indicative list of HS code numbers for the chemicals listed in Annex III of the Convention. In addition, at the seventh session of the Committee the representative of WCO gave a detailed presentation on the structure and functioning of the nomenclature applied within the Harmonized System customs codes.
5. The Committee, at its seventh session, requested the secretariat to continue to work with WCO, together with other relevant organizations, in order to encourage WCO, in line with article 13, paragraph 1, of the Rotterdam Convention, to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals listed in Annex III to the Convention. The Committee agreed that such work should be completed in time to meet the 2007 deadline for the next set of amendments to the Harmonized System.
6. On 18 July 2001, the Executive Secretaries visited WCO headquarters in Brussels and met with the WCO secretariat. During that meeting, a possible approach was discussed in some depth that would allow for the assignment of specific Harmonized System customs codes for the chemicals listed in Annex III of the Convention. That possible approach is described in the second chapter of this paper, while the process for making amendments to the Harmonized System is described in the third chapter.

II. POSSIBLE APPROACH TO ASSIGNING SPECIFIC HARMONIZED SYSTEM CUSTOMS CODES FOR CHEMICALS SUBJECT TO THE PRIOR INFORMED CONSENT PROCEDURE

7. The Harmonized Commodity Description and Coding System (Harmonized System) was established in 1983 under the International Convention on the Harmonized Commodity and Coding System and entered into force on 1 January 1988. It is a systematic approach to assigning codes to commodities in international trade. Major structural changes to the current system in order to meet the needs of multilateral environmental agreements or other secondary customers are very unlikely. WCO has, however, shown willing and increasing flexibility in facilitating the use of the Harmonized System to also meet the needs of the conventions. The United Nations conventions on narcotic drugs, psychotropic substances and precursors, Basel Convention, Montreal Protocol and Convention on the International Trade in Endangered Species (CITES) have all gained from the use of the Harmonized System in international trade in areas covered by those conventions (i.e., hazardous wastes, ozone-depleting substances and endangered species).
8. All of the chemicals listed in Annex III, as technical products (i.e., not mixed and not put up for retail sale), are classifiable in chapter 28 of the Harmonized System (Inorganic chemicals; organic or inorganic compounds of precious metals, of rare earth metals, of radioactive elements or of isotopes) or chapter 29 (Organic chemicals) with the exception of crocidolite, which is classifiable in chapter 25 (Salt; sulphur; earths and stone; plastering materials, lime and cement). Some of the chemicals in Annex III of the Rotterdam Convention (mercury, DDT and hexachlorocyclohexane), have unique Harmonized System codes under chapter 28 or chapter 29.
9. All the pesticides listed in Annex III are classifiable in heading 38.08 when they have the character of preparations, or intermediate preparations requiring further compounding to produce the ready-for-use pesticides. This heading reads: Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants, and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly papers).

10. Formulated or end-use products of the industrial chemicals listed in Annex III, are not so easy to classify exhaustively. To do so, it is necessary to identify all possible end uses of the industrial chemical, and create an appropriate sub-heading (six digit code) for each. In a number of cases, this will lead to dozens, and potentially hundreds, of sub-headings throughout the Harmonized System. This would significantly increase the burden of implementing the code, with potentially only a small benefit.

11. Table 1 shows how the existing Harmonized System could be amended to include the chemicals listed in Annex III. Possible changes to the Harmonized System are shown in bold. Within table 1, existing four-digit codes are provided under which new codes for the chemicals would be inserted as six-digit codes; these are not in bold. Chemicals listed in Annex III that are already provided with individual codes in the Harmonized System are also shown within table 1; these are not in bold.

12. No attempt has been made to insert Harmonized System codes for formulated or end-use industrial chemicals.

13. Severely hazardous pesticide formulations are included only as formulated or end-use products and not as technical products.

Table 1

Heading	H.S. Code	
25.24	2524.00	Asbestos
	2524.01	Crocidolite
28.05		Alkali or alkaline-earth metals; rare-earth metals, scandium and yttrium, whether or not intermixed or interalloyed; mercury.
	2805.40	Mercury ¹²
29.03		Halogenated derivatives of hydrocarbons
	2903.31	1,2-Dibromoethane (EDB)
	2903.51	1,2,3,4,5,6-Hexachlorocyclohexane (HCH) and lindane
	2903.52	Aldrin, chlordane, heptachlor
	2903.62	Polybrominated biphenyls, polychlorinated biphenyls, polychlorinated terphenyls , hexachlorobenzene ² and DDT (1,1,1-trichloro-2,2-bis(p-chlorophenyl)ethane ²)
29.08		Halogenated, sulphonated, nitrated or nitrosated derivatives of phenols or phenol-alcohols
	2908.11	Pentachlorophenol
	2908.30	Dinoseb

¹ Individual HS Codes may be given to the range of mercury compounds if necessary.

² HS Code already available.

Heading	H.S. Code	
29.10		Epoxides, epoxyalcohols, epoxyphenols and epoxyethers, with a three-membered ring, and their halogenated, sulphonated, nitrated or nitrosated derivatives.
	2910.40	Dieldrin
29.18		Carboxylic acids with additional oxygen function and their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulphonated, nitrated or nitrosated derivatives
	2918.17	Chlorobenzilate
	2918.91	2,4,5-Trichlorophenoxyacetic acid
29.19	2919.00	Phosphoric esters and their salts, including lactophosphates; their halogenated, sulphonated, nitrated or nitrosated derivatives
	2919.10	Tris(2,3-dibromopropyl)phosphate
29.24		Carboxamide-function compounds; amide-function compounds of carbonic acid
	2924.12	Fluoroacetamide
29.25		Carboxyimide-function compounds (including saccharine and its salts) and imine-function compounds
	2925.21	Chlordimeform
29.30		Organo-sulphur compounds
	2930.50	Captafol
38.08		Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers).
	3808.10	Insecticides
	3808.11	Containing aldrin, chlordane, chlordimeform, chlorobenzilate, DDT, dieldrin, 1,2-dibromoethane (EDB), HCH (mixed isomers), heptachlor, hexachlorobenzene, lindane, pentachlorophenol
	3808.12	Containing monocrotophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient/l), methamidophos (Soluble liquid formulations of the substance that exceed 600 g active ingredient/l), phosphamidon (Soluble liquid formulations of the substance that exceed 1000 g active ingredient/l), methyl-parathion (emulsifiable concentrates (EC) with 19.5%, 40%, 50%, 60% active ingredient and dusts containing 1.5%, 2% and 3% active ingredient), parathion (all formulations -

Heading	H.S. Code	
		aerosols, dustable powder (DP), emulsifiable concentrate (EC), granules (GR) and wetttable powders (WP) - of this substance are included, except capsule suspensions (CS))
	3808.20	Fungicides
	3808.21	Containing captafol
	3808.30	Herbicides, anti-sprouting products and plant-growth regulators
	3808.31	Containing 2,4,5-trichlorophenoxyacetic acid
	3808.90	Other
	3808.91	Containing fluoroacetamide
	3808.92	Containing mercury compounds, including inorganic mercury compounds, alkyl mercury compounds and alkyloxyalkyl and aryl mercury compounds

III. PROCESS FOR MAKING AMENDMENTS TO THE HARMONIZED SYSTEM

14. The preamble to the International Convention on the Harmonized Commodity and Coding System emphasizes the importance of ensuring that the Harmonized System is kept up to date in the light of changes in technology or in patterns of international trade. Article 7 of that Convention further states that it is for the Harmonized System Committee to propose such amendments to the Convention as may be considered desirable, having regard, in particular, to the needs of users. At its first session (1988) the Harmonized System Committee agreed to allow an interval of about four to five years between each recommendation.

15. All applications seeking additions, deletions and changes to entries in the Harmonized System are considered in the first place by the Harmonized System Review Sub-committee that meets twice a year. Recommendations are then submitted to the Harmonized System Committee for its approval before being sent to the Council for adoption. The Harmonized System Committee meets twice a year. A Scientific Sub-Committee assists in the most technical work, in particular with questions involving the classification of chemical products, and meets generally once a year.

16. Draft amendments were submitted by the Harmonized System Committee to the Council, which in June 1999 adopted the recommendation amending the Harmonized System. The amendments will enter into force on 1 January 2002.

17. The preparatory process for the next set of amendments to the Harmonized System Nomenclature, that is expected to enter into force in 2007, has already started. For amendments to enter into force on 1 January 2007, they need to be adopted by the Council by mid-2004, and the WCO secretariat is now inviting proposals and comments for the preparative process of the HS Committee.

18. The secretariat would like to bring to the attention of the Intergovernmental Negotiating Committee that both the HS Committee and the Council may have some reservations in preparing, respectively adopting the recommendations incorporating the Annex III chemicals in the Harmonized System if the Rotterdam Convention has not entered into force by mid-2004, with the effect that assignment of codes may be further delayed until 2012 or later.

VI. POSSIBLE ACTION BY THE COMMITTEE

19. The Committee may wish to request the secretariat to continue working with the WCO secretariat to propose specific Harmonized System customs codes for the individual chemicals or groups of chemicals listed in Annex III in time to meet the 2007 deadline for the next set of amendments to the Harmonized System. Such a proposal could be along the lines presented in table 1 of this note, taking into account any further guidance provided by the Committee.
