UNITED NATIONS

MC

UNEP/MC/COP.3/5

Distr.: General
13 August 2019

Original: English

United Nations Environment Programme

**Conference of the Parties to the Minamata Convention on Mercury**
**Third meeting**
Geneva, 25–29 November 2019
Item 5 (a) (iii) of the provisional agenda*

**Matters for consideration or action by the Conference of the Parties: mercury-added products and manufacturing processes in which mercury or mercury compounds are used: Harmonized System codes**

# Approaches to identifying and distinguishing non-mercury-added products and mercury-added products listed in Annex A on the basis of the Harmonized System framework

## Note by the secretariat

1. At its second meeting, the Conference of the Parties to the Minamata Convention on Mercury, in its decision MC-2/9, on Harmonized System codes, requested the secretariat, in collaboration with the Products Partnership and in consultation with relevant organizations, to suggest approaches for customs codes to identify and distinguish non-mercury-added products and mercury-added products listed in Annex A to the Convention, including approaches for their possible harmonization, taking into account the results of the survey on the Harmonized System initiative developed by the United Nations Environment Programme Global Mercury Partnership – Mercury in Products partnership area. By that decision, the secretariat was requested to circulate to parties and other stakeholders a draft report for comment, to revise the draft report taking into account the comments received, and to present the report to the Conference of the Parties at its third meeting for its consideration.

2. In response to those requests, a draft report was developed by the secretariat in collaboration with the Products Partnership and supported by expert consultant advice. Comments were made on the draft report by the Products Partnership for a week between May and June. It was then uploaded to the Convention website for comment until 1 August 2019 and subsequently revised by the secretariat in consultation with the Products Partnership, taking into account the comments received. The executive summary of the report is presented as the annex to the present note. The full report is set out in document UNEP/MC/COP.3/INF/12.

## Suggested action by the Conference of the Parties

3. The Conference of the Parties may wish to consider the information presented.

* UNEP/MC/COP.3/1.

# Annex

## Summary of the report on approaches to identifying and distinguishing non-mercury-added products and mercury-added products listed in Annex A on the basis of the Harmonized System framework

## Overview

1. At its second meeting, the Conference of the Parties in its decision MC-2/9 requested the secretariat to suggest, in collaboration with the United Nations Environment Programme Global Mercury Partnership Products Area (Products Partnership) and taking into account the results of the survey on the Harmonized System initiative developed by the Products Partnership, possible approaches for customs codes to identify and distinguish non-mercury-added products and mercury-added products listed in Annex A to the Convention, including approaches for their possible harmonization. The report therefore provides background information on the matter and presents approaches for parties, as well as non-parties, to consider, consistent with the Harmonized System framework.

## I. Customs codes

2. The Harmonized Commodity Description and Coding System, also known as the Harmonized System (HS), comprises internationally standardized nomenclature used to classify traded commodities. The Harmonized System came into effect in 1988 and has since been developed and maintained by the World Customs Organization (WCO), an independent intergovernmental organization based in Brussels.[1] As at May 2019, there were 211 countries, territories, and customs and economic unions applying the Harmonized System, making it a globally recognized and effective system. The Harmonized System is organized into 21 sections that are subdivided into 96 chapters. The 96 chapters are further subdivided into approximately 1,200 headings and 5,400 subheadings describing products in more detail. However, at present, the Harmonized System is generally not detailed enough to differentiate between non-mercury-added products and mercury-added products.

3. A basic HS code consists of up to six digits. Up to the six-digit level, contracting parties to the International Convention on the Harmonized Commodity Description and Coding System have agreed to use the HS nomenclature for chapter, heading and subheading, including relevant legal notes. Management of HS codes at this level is the responsibility of WCO, and changes are implemented every five or six years in accordance with the WCO submission and approval process. With very few exceptions, therefore, all countries use the same six-digit nomenclature.[2] Customs codes with more than 6 digits – typically used for tariff and statistical purposes – may be revised or created unilaterally by each country according to its own procedures. Most countries applying the Harmonized System have established procedures for implementing customs codes of more than six digits.

4. Research conducted indicates that countries most commonly go beyond the six-digit HS codes at the regional and national levels for the purpose of imposing customs duties, primarily by creating eight-digit "tariff" codes. Similarly, customs codes of 10 digits or more may be created for statistical and other purposes, sometimes at the recommendation of WCO. It was at the eight- and 10-digit levels that the Products Partnership envisioned potential collaboration among the parties, with the objective of obtaining better trade data distinguishing between non-mercury-added products and mercury-added products listed in Annex A to the Minamata Convention.

## II. Customs codes survey

5. After carrying out relevant background research, the Products Partnership sought to determine the level of interest among parties to the Minamata Convention in enhancing customs codes as a potential source of improved Annex A product data in support of the Convention and of decision MC-2/9.

[1] www.wcoomd.org/en/topics/nomenclature/overview.aspx.

[2] unstats.un.org/unsd/tradekb/Knowledgebase/50018/Harmonized-Commodity-Description-and-Coding-Systems-HS.

6. In July 2018, under the Harmonized System initiative, a brief online survey was sent to representatives of all Governments that had attended the first meeting of the Conference of the Parties. (The online survey is available in appendix F of the full report set out in document UNEP/MC/COP.3/INF/12.) Of the 40 countries that responded to the survey, 39 supported a Harmonized System initiative. In the case of the one country that did not express support, it was not clear whether the survey questions had been completely answered.

7. Seven survey respondents indicated that they had already taken action to better identify Annex A products via customs codes. The Annex A product groups most often identified by these seven respondents were groups including products that were easier to identify visually or products with a higher volume of mercury added (i.e., batteries, switches/relays, lamps and measuring devices).

# III. Follow-up research and consultation

8. In response to the mandate from the Conference of the Parties, subsequent research included consultation with a range of stakeholders with special expertise in the HS framework and/or previous involvement in the development of targeted customs codes. The issues listed below were examined, along with the approaches used by the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides and the Montreal Protocol on Substances that Deplete the Ozone Layer, as well as efforts by individual countries to respond to the needs of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Thailand) and the Stockholm Convention on Persistent Organic Pollutants (Uruguay), as discussed in chapter 4 of the full report and the appendices related to it.

| *Existing customs codes for mercury-added products* | *Processes for generating and approving new customs codes* | *Harmonization of customs codes for mercury-added products* |
|---|---|---|
| • Identifying online sources of various countries' customs codes<br>• Identifying various countries' customs codes (more than six digits) that specifically identify mercury-added products<br>• Noting cases where countries may already be using different customs codes for the same mercury-added product | • Understanding any domestic constraints on revising or adding customs codes for this purpose<br>• Understanding the process for generating and approving new six-digit codes, and how it has been used in various multilateral environmental agreements<br>• Describing the process for generating and approving new codes of more than six digits<br>• Ensuring that new customs codes are properly defined and worded | • Considering approaches that include, as requested by decision MC-2/9, the possible harmonization of codes for mercury-added products listed in Annex A to the Convention, including through regional organizations or national authorities |

# IV. Annex A products

9. Under article 4, the Convention generally prohibits the manufacture, import and export of mercury-added products listed in Part I of Annex A, unless an exemption has been specifically registered by a party pursuant to article 6. There are currently nine product categories listed in part I of Annex A related to batteries, switches and relays, lighting, cosmetics, pesticides, biocides and antiseptics, and measuring devices. The Convention also requires parties to take domestic measures to phase down the use of dental amalgam, as listed in part II of Annex A.

10. The general product categories listed in Annex A are already mostly included in six-digit HS codes in the WCO nomenclature, although the HS is generally not detailed enough to differentiate between mercury-added and non-mercury-added products. Chapter 5 of the full report provides an overview of many of the applicable six-digit HS codes, which are presented in greater detail in appendices H and I of the full report.

# V. Suggested approaches in response to decision MC-2/9

11. Decision MC-2/9 requires the secretariat to suggest approaches for customs codes to identify and distinguish between non-mercury-added products and mercury-added products listed in Annex A to the Convention, including approaches for their possible harmonization. In response, four basic

approaches to identifying and distinguishing between non-mercury-added products and mercury-added products have been identified:

## A. Develop internationally harmonized six-digit HS codes pursuant to the established WCO process

12. Using six-digit HS codes for differentiating mercury-added products from non-mercury-added products, as discussed in section 2.2 of the full report, would build on the established WCO structure and formal procedures (e.g., those governing rules of origin and monitoring of controlled goods). In line with the HS practice, this approach would imply "automatic" international harmonization, since all countries using the HS system would, under the WCO process, be obliged to adopt the same HS codes.

## B. Develop statistical codes of more than six digits

13. Developing statistical codes of more than six digits for identifying and differentiating mercury-added products from non-mercury-added products, as described in section 2.5 of the full report, allows national governments and regional entities to add two or more digits to an existing six-digit HS code on their own initiative (typically for a total of eight to ten digits). These statistical codes could be developed in various ways depending on the desired level of harmonization.

## C. Deliver some combination of the two above-mentioned approaches

14. Combining the more formal six-digit approach (as in A above) and the more dynamic, greater-than-six-digit approach (outlined in section B above) is another way forward. In practice, this would imply the development of interim statistical codes of more than six digits in the near term, some or all of which could ultimately be superseded by six-digit HS codes created according to the formal WCO procedure.

## D. Do not explore new customs codes under the Convention

15. The basis of this approach is to encourage Parties to use available tools and resources in the most effective manner to implement Minamata Convention provisions for mercury-added products in Annex A. Under this option, parties are encouraged to work individually or to collaborate as they consider best with regard to the development and use of customs codes, along with any other tools such as regulations, monitoring procedures, labelling requirements, or adding information to customs codes to ensure that customs and market surveillance authorities are fully aware of the import and export restrictions on mercury-added products.

16. Further information on each of these four approaches may be found in chapter 6 of the full report, which discusses each approach in terms of several factors that are not mutually exclusive, including feasibility, complexity and implementation time.

17. Decision MC-2/9 of the second Conference of the Parties also requested that the report include possible approaches for the harmonization of customs codes for the products listed in Annex A, where "harmonization" implies that all parties would use the same codes for the same mercury-added products. However, harmonization under any of the first three of the above-mentioned approaches poses both opportunities and challenges and is inextricably linked to the issue of whether customs codes of six digits or more than six digits are being considered. If WCO is requested to develop HS codes (i.e., six-digit codes), all parties are obliged to adopt these codes under the HS system. On the other hand, with voluntary statistical codes of more than six digits, different degrees of harmonization are possible, depending on the approach taken.