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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

Seventh session

Geneva, 30 October – 3 November 2000

Item 5 (e) of the provisional agenda*

PREPARATION FOR THE CONFERENCE OF THE PARTIES

Assignment of specific Harmonized System custom codes

Note by the Secretariat

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. In view of the urgency of this issue, the Committee, at its sixth session, invited the secretariat and the chair to initiate contacts with the World Customs Organization (WCO) and the secretariat was requested to report to the Committee at its next session on the outcome of those contacts. The secretariat was also invited 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.

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3. Pursuant to this request, the secretariat initiated contacts with WCO. 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.

4. In a letter dated 14 April 2000, WCO responded with a list of HS code numbers for the chemicals listed in Annex III of the Convention. In its letter, WCO pointed out that the list contains HS code numbers for the chemicals listed both in their unmixed form and in their mixed form or in forms available for retail sale. As the HS code numbers are based on applications, some of the chemicals listed in Annex III will have several HS code numbers, depending on their application. For some of the chemicals (PBB, PCB, PCT and tris) no HS code number is provided, since the application is not specified. Also, WCO drew attention to the fact that the prefix "ex" in a given code number indicates that the chemical at issue is only one of a group of chemicals classified under a common subheading. The correspondence between the secretariat and WCO described in this and the preceding paragraph is set out in annex I to UNEP/FAO/PIC/INC.7/INF/3.

5. The secretariat has invited 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 to submit short reports on their progress in and experiences with the use of HS customs codes. The two reports are annexes II and III, respectively, to UNEP/FAO/PIC/INC.7/INF/3.

Issues for consideration by the Committee

6. Further work on this issue will depend on how the language in article 13, paragraph 1, "to assign specific Harmonized System custom codes", is understood, as well as what is considered to be the purpose of assigning HS customs codes to the chemicals in Annex III.

7. It appears from the list prepared by WCO that there might be two or more HS code numbers assigned to each of the chemicals in Annex III, depending on its use category and whether it is in unmixed form or not. Furthermore, in the majority of cases, each HS code number might be "shared" with a number of other chemicals not subject to the Convention. Consequently HS code numbers would not uniquely identify chemicals as subject to the Convention. Furthermore, this sharing of code numbers would make it difficult to collect and report statistics.

8. A more specific identification of the chemicals listed in Annex III of the Convention on the basis of HS code numbers may require the creation of a new sub-heading in the nomenclature. This is a process that may take several years, if it is at all possible, as any changes in HS customs codes are adopted on a five-year cycle.

Possible action by the Committee

9. The Committee may wish to provide guidance for the secretariat in its further work on this issue. Parties with specific experience in the use of HS code numbers for chemicals listed in Annex III may wish to make this experience available to the Committee in order to support its further considerations.
