



Distr.: General

3 March 2016

English only

**Open-ended Working Group of the Basel Convention
on the Control of Transboundary Movements of
Hazardous Wastes and Their Disposal
Tenth meeting**

Nairobi, 30 May–2 June 2016

Item 3 (d) (iii) of the provisional agenda*

**Matters related to the work programme of the
Open-ended Working Group for 2016–2017:
international cooperation and coordination:
cooperation with the World Customs Organization
on the Harmonized Commodity Description and
Coding System**

Cooperation with the World Customs Organization on the Harmonized Commodity Description and Coding System

Note by the Secretariat

1. In its decision BC-10/10, on the review of cooperation with the World Customs Organization (WCO) and its Harmonized System Committee, the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal requested the Secretariat to pursue its cooperation with the secretariat of the Organization and the Organization's Harmonized System Committee, Harmonized System Review Subcommittee and Scientific Subcommittee. At its twelfth meeting, the Conference of the Parties took note of the Secretariat's report on the progress of its work with the secretariat of the WCO.¹
2. The Secretariat participated in the 48th and 49th sessions of the WCO Harmonized System Review Subcommittee held in Brussels from 18 to 22 May 2015 and from 16 to 20 November 2015, respectively. The outcomes of the deliberations of the Subcommittee are reproduced in the annex to the present note. The next meeting of the Subcommittee is scheduled to take place in May 2016. The present note, including its annex, has not been formally edited.

* UNEP/CHW/OEWG.10/1.

¹ UNEP/CHW.12/7.

Annex

Reports of the 48th and 49th sessions of the World Customs Organization Harmonized System Review Subcommittee

I. Extract from the report of the 48th session of the Harmonized System Review Subcommittee, 18-22 May 2015

Annex C/2 to document NR1066E1c (RSC/48/May 2015)

Possible amendment of the HS in respect of certain categories of waste (Proposal by the Secretariat of the Basel Convention)

Observations of the Harmonized System Review Subcommittee

1. After the introduction of the working document by the Chairperson, thanking the representatives of the BC (Basel Convention) Secretariat and of the EU for attending the meeting referred to in the working document, the Deputy Director emphasised the importance of this issue for many of Contracting Parties to the HS Convention. He stated that the WCO Secretariat was of the view that it was necessary to pursue this issue in a proper manner and try to come up with some provisions in the HS Nomenclature that could assist Administrations in monitoring the transboundary trade in waste. He hoped that, taking into consideration the outcomes of the meeting referred to in the working document, the delegates could express some ideas how to further proceed with this issue.
2. A majority of delegates agreed with the approach to focus on developing separate definitions, and creating separate headings or subheadings, for waste under specific Chapters rather than creating a general definition of waste. Many of these delegates also agreed that the definition suggested by the participants of the meeting referred to in the working document could be a very good starting point for the Sub-Committee's further examination of this issue.
3. Referring to paragraph 22 of the working document, the Delegate of Japan pointed out that under the current Nomenclature, electric and electronic waste, other than industrial waste, was classified in heading 38.25 as municipal waste defined in Note 4 to Chapter 38. Therefore, her Administration was of the opinion that if the Sub-Committee preferred to use the current Nomenclature, new subheadings for waste of articles of Chapters 82, 84, 85, 86, 87, 88, 90, 91, 92, 94 and 95 could be created under heading 38.25, and Note 4 to Chapter 38 could be modified accordingly. With respect to the waste, other than municipal waste, her Administration supported the view of the WCO Secretariat in paragraph 28 of the working document that the Sub-Committee should discuss the definitions and headings or subheadings for specific categories of waste. In addition, she pointed out that it might be necessary to amend Note 8 (a) to Section XV, defining waste and scrap of base metal if a new Note for waste and scrap was introduced in Chapter 82.
4. Other delegates provided the following comments regarding the outcomes of the meeting referred to in the working document:
 - (a) It could be more efficient to create legal Notes to Sections XVI and XVII, defining waste of articles of these Sections, rather than introducing specific Notes to separate Chapters of these Sections;
 - (b) It would be crucial to determine a clear demarcation line between possible new headings for "e-waste" (i.e., "goods containing electric or electronic devices or components") and other headings of particular Chapters, especially with respect to parts of Section XVI and waste of precious metals and base metals;
 - (c) It should be considered whether a legal Note defining waste articles of Chapter 82 was necessary because in accordance with current Note 8 (a) to Section XV, which also applies to Chapter 82, articles such as broken steel knives or broken steel keys were classified in heading 72.04 as ferrous waste and scrap;
 - (d) Concerning the articles intended to be repaired or renovated, which should be excluded from the definition of waste as suggested in paragraph 20 of the working document, it was pointed out that those articles could be reused not only for their initial purpose, but also for subsequent trade;
 - (e) It would be necessary to establish clear criteria for the classification of mixed waste consignments because waste machines and apparatus were often presented mixed with other waste, for example, of plastics or rubber.

5. Responding to some questions raised by certain delegates, the Deputy Director explained that:
 - (a) Taking into account the difficulties in defining waste in general, the participants to the meeting referred to in the working document had felt it appropriate to focus on a text that would accommodate most of the waste articles of specific Chapters;
 - (b) Based on the general definition of e-waste, the participants had been of the view that, as a starting point, Chapters 82, 84, 85, 86, 87, 88, 90, 91, 92, 94 and 95 were the most appropriate Chapters where the definition should be included.
6. With the intention to make the definition in paragraph 20 of the working document clearer, the Sub-Committee agreed (i) to delete the first expression placed in square brackets, i.e., “degraded or worn-out”, and (ii) to replace the phrase “wear, degrade” in the second square brackets with the word “degradation”.
7. In this connection, the Delegate of Australia suggested adding a new last sentence at the end of the definition that would read: “This does not include articles which are economically suitable for repair or renovation to render them fit for their original purpose.”
8. After the exchange of views, the Chairperson suggested that for its further discussion on this issue, the Sub-Committee could focus on a possible amendment to Section XVI on the basis of the outcomes of the meeting referred to in the working document and of the Sub-Committee’s discussion at this session. After considering the possible amendment, the Sub-Committee could then decide whether and how its discussion could be extended to other Chapters and other categories of waste.
9. The Sub-Committee agreed with the Chairperson’s suggestion and instructed the WCO Secretariat to prepare a new working document concerning the possible amendment to Section XVI for the Sub-Committee’s examination at its next session.
10. Thanking the Sub-Committee for its attention to the BC Secretariat’s proposal, the UNEP representative informed the Sub-Committee that after seven years, Contracting Parties to the Basel Convention had adopted Technical Guidelines on provisional basis, which were available on the Web site of the Basel Convention. He explained that the Guidelines provided guidance on transboundary movements of used equipment destined for repair and reuse, and included a glossary of terms, such as “e-waste”, “repair”, “reuse” and “recycling”, and certain procedures relating to the transboundary movement, such as a procedure on acceptability of trade and transboundary movement of used electronic equipment, certification, etc. He pointed out that it was expected that during a provisional period of the use of the Technical Guidelines, Contracting Parties to the Basel Convention were requested to use the Guidelines and provide feedback or comments on the use and any important aspects of the transboundary movement of waste to the BC Secretariat for further revision of the document. This should also reveal which specific waste streams need specific codes. In addition, he stated that a Contact Group on legal clarity had also produced certain definitions that could be used as a reference for legal definitions. He finally invited delegates and the WCO Secretariat to contact the BC Secretariat should they need more information or clarifications.

II. Extract from the report of the 49th session of the Harmonized System Review Subcommittee, 16-20 November 2015

Annex C/2 to document NR1096E1c (RSC/49/Nov. 2015)

Possible amendments to the HS in respect of certain categories of waste (Proposal by the Secretariat of the Basel Convention)

Observations of the Harmonized System Review Subcommittee

1. After the introduction of the working document, the Chairperson drew the Sub-Committee’s attention to the fact that the Annex to the working document included two parts of possible amendments, namely, Part (A) : Creation of a new legal Note to Section XVI or, alternatively, new legal Notes to Chapters 84 and 85, and Part (B) : Headings in Chapters 84 and 85 providing for waste and scrap of articles of this Section. He pointed out that each Part included some options for the particular amendments proposed by the Secretariat and, therefore, the Sub-Committee should first choose among the options.
2. With respect to the four Options under Part (A), some delegates expressed their preference for Option I, some delegates preferred Option II and one delegate said that the Sub-Committee’s discussion could continue on the basis of either Option I or Option II. Regarding the two Options

under Part (B), certain delegates supported Option II and there was no preference expressed in respect of Option I during the Sub-Committee's discussion.

3. As far as the proposed amendment was concerned, the Delegate of Switzerland pointed out that since waste and scrap of articles of Section XVI was normally collected and presented together with waste and scrap of articles of Chapter 90, it might be difficult to distinguish between those two kinds of waste and scrap. Therefore, he was of the view that it would be better to create only one heading to cover, for example, all electric and electronic waste (e-waste) of Chapters 84, 85 and 90.

4. The Delegate of Australia expressed her Administration's concern with respect to the intended coverage of waste and scrap of Section XVI. She drew the Sub-Committee's attention to heading 71.12 which currently covered "waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal", and to Note 8 to Chapter 71 that gave preference to goods of heading 71.12 over any other heading of the Nomenclature. Furthermore, she pointed out that the Explanatory Note to heading 71.12, Item (E), on page XIV-7112-1, mentioned waste and scrap of electronic circuit boards and similar carriers containing precious metal (e.g., gold or silver) as waste and scrap included in this heading. Therefore, taking into account the new proposed Notes and Note 3 (k) to Chapter 71, which gave priority to Section XVI in the classification of goods of this Section over Chapter 71, she wondered whether the intention was that the electronic circuit boards or other electronics containing gold or silver or other precious metal would be transferred to Section XVI. If so, she was of the opinion that it would be necessary to amend the current legal provisions in Chapter 71 in order to avoid any possible overlap between waste and scrap of heading 71.12 and waste and scrap of Section XVI.

5. Australia continued by drawing the Sub-Committee's attention to the similarities between the wording of Note 8 (a) to Section XV defining waste and scrap of this Section and the new proposed Notes to Section XVI. She pointed out that Note 8 (a) to Section XV referred to metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons. However, the new proposed Notes to Section XVI referred, in Option I, to similar conditions, i.e., "breaking, cutting-up, degradation or other reasons", and in Option II, to the same conditions, i.e., "breaking, cutting-up, wear or other reasons". In this connection, she said that her Administration currently considered that a wide range of mostly waste metal, from scrapped engines to crashed cars, was classifiable in Section XV by application of Note 8 (a) to this Section. In her Administration's opinion, with the high level of similarity between the wording of Note 8 (a) to Section XV and the new proposed Notes to Section XVI, it was not certain what would be covered by the new proposed headings for Chapters 84 and 85, given the fact that the new Notes to Section XVI would give priority to Note 8 (a) to Section XV. This might result in different classifications as it would depend upon how the administrations determined the coverage of Note 8 (a) to Section XV.

6. In conclusion, Australia said that her Administration was of the opinion that more consideration is to be given to define the scope of waste of Section XVI in order to get the intended coverage of e-waste and other goods of concern within Section XVI. Therefore, her Administration would request guidance from the Harmonised System Committee whether a movement of goods is intended from Chapter 71 and what would be in broad terms the expected coverage of Note 8 (a) to Section XV and new proposed Notes to Section XVI.

7. The Delegate of Japan, agreeing that the Sub-Committee should discuss this matter on the basis of the definition mentioned in paragraph 8 of the working document and taking into account the guideline on e-waste developed by the Secretariat of the Basel Convention, said that her Administration would like to insert in the proposed new Note 6 to Section XVI an exclusion that would specify that waste and scrap defined in Note 8 to Chapter 71 would be excluded.

8. Agreeing that the Sub-Committee still had to consider the scope of waste and scrap of articles of Section XVI in relation to provisions for waste and scrap in other Sections and Chapters, the Deputy Director, with respect to the scope of the definition in Note 8 (a) to Section XV, noted that it was the Secretariat's understanding that this Note mainly relates to cuts from the manufacture of products of iron and steel or other base metals and not machines as such.

9. In this respect, the Delegate of Australia suggested that Note 8 (a) to Section XV might be slightly amended by inserting a phrase "machinery or electrical goods cut-up, crashed or otherwise rendered only suitable for recovery of metals," after the expression "metal waste and scrap from the manufacture or mechanical working of metals,". In her view, this would make it pretty clear that only machinery that was basically being broken up into bits of scrap metal could end up as a waste of base metals, but any machinery that would retain some form that could be repurposed, reused, recycled, etc., would remain in the appropriate headings for waste within Chapter 84 or 85.

10. Regarding the waste and scrap of heading 71.12, the Deputy Director drew the Sub-Committee's attention to the legal Notes to Section XVI that included some exclusion Notes to Chapter 71, but emphasised that there was no exclusion Note for heading 71.12. In his view, that could indicate that some of the machines, being waste and scrap of Section XVI, could still remain in Section XVI, even if they contained precious metal. In order to respond to the request by Japan, he suggested that the Sub-Committee could consider to insert a new item (c) in the exclusion part of the proposed Note in Option I that could read as follows : "waste and scrap of heading 71.12".

11. However, the EU Delegate pointed out that since heading 71.12 referred to precious metal, its scope was limited to certain specific kinds of electronic waste. Therefore, he was not sure that inserting this new item (c) would be relevant. Nevertheless, he indicated that if the Sub-Committee decided to insert the new item, his Administration would not be against the modification.

12. Noting that his Administration had classified certain electronic waste that contained gold in heading 71.12, the Delegate of Switzerland was of the view that all administrations may consult their classification decisions in order to find out what kind of waste they classified in heading 71.12.

13. After the exchange of views and taking into account that there had not been any support for Options III and IV in Part (A) and for Option I in Part (B) of the proposed amendments, the Chairperson suggested that these parts be deleted from the proposed amendments, and to continue the discussion on this issue at the next session of the Sub-Committee. The Sub-Committee agreed.

14. Taking into account the concerns raised during the Sub-Committee's discussion, such as the determination of the scope of waste and scrap of Section XVI in relation to waste and scrap of other Sections, including those defined in Chapter 71 and Section XV, the Chairperson finally invited administrations to submit their proposals in this respect to the Secretariat during the intersession.
